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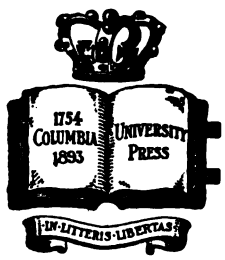
THE GOVERNMENT

OF

MUNICIPALITIES

BY

DORMAN B. EATON



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PREFACE

THE main topics treated in this volume and the reasons for the order of their presentation are so fully explained in the introductory chapter that few words are needed here. The lack of any generally accepted municipal system in the United States and the contrariety of opinion concerning the most important methods of municipal government are recognized facts, — and they must largely affect the treatment of our subject. Conflicts of opinion and serious disputes about theories and methods would be unavoidable even if nothing further should be attempted than a plan of city government formed by compilation and deductions from American precedents and experience alone.

I must think that such a treatment of the matters we are to deal with would be quite inadequate; for very instructive lessons in municipal government can be best studied in the practical methods, and the results of administration in the leading cities of Europe, where municipal experience has been much longer and more varied than in the United States. Nevertheless, our municipal system must be framed in harmony with our constitutional principles and social life; so that, while nothing intrinsically good should be rejected merely because of its foreign origin, nothing can be adopted unless compatible with the fundamental theories of republican government.

Despite the fact that no view of city governments is so uniform and pervading in the United States as the opinion

that they are unsatisfactory, if not discreditable, there will doubtless be readers who will shrink from any attempt to improve them from a study of the enlightened experience of the older nations.

It seems inevitable that the treatment of the subject before us should be controversial as to some important points, — especially as to nominations, minority representation, the choice of mayors, the composition of city councils, and the relation of parties to city government, — but I have sought to avoid all merely theoretical discussions. Municipal government is a very practical affair, which should be based on constitutional principles, and the well-tested facts of experience — and not on parties. Nevertheless, there are some matters as to which a sound theory is so important as to be worth all its vindication may cost.

The difficulty of establishing a sound municipal system in the United States is, I think, much greater than it is supposed to be by those who seem to regard separate city elections and Home Rule as sufficient in themselves for the purpose, though I regard these measures as highly useful. Yet, I am convinced that far more drastic and comprehensive remedies are needed, — remedies some of which are practicable in this decade, at the present stage of civic instruction, — without waiting for that more thorough municipal education which the recently aroused municipal sentiment of the country seems sure to supply.

I have ventured to suggest several remedial measures, some of which I hope may be found available, in the near future, in aid of the municipal reform we so greatly need.

In going over the earlier parts of this volume the reader may regard it as being in considerable measure historical and critical, but, before he has completed it, he may perhaps think it to be in yet larger part constructive and practical.

In the midst of the vast contrariety and confusion of our hastily devised municipal constructions, I have felt the need of a definite plan and theory of city government, — carefully considered on the basis both of principle and experience, — and I have therefore presented such a plan, well knowing, however, that it would encounter fewer objections if it were less definite and therefore less useful for its purpose. Besides, it seems to be essential for our municipal betterment, to bring our indefinite municipal thinking — or lack of thought — and our manifold partisan schemes, of city domination for party and sectarian advantage, to the test of a definite kind, and organization of city government, having its principles defined and its methods organized in the interests of the people and not of any party or sect.

Being much indebted to several gentlemen for valuable information and suggestions, I wish to make some acknowledgments here. Ex-Mayor Hewitt had the kindness to read the first six chapters of this volume before they were sent to the press. President Low and Professor Goodnow, of Columbia University, obligingly read the first seventeen chapters in manuscript, and I am indebted to them for valuable suggestions, and for opportunities for discussing municipal subjects. To Dr. Albert Shaw, I am indebted much beyond my obligation from a study and large use of his volumes on municipal subjects.[1] Ex-Mayor Strong, of New York, has given me very useful information from his experience. Judge Wheeler and Judge Brown — of the United States District Court — have placed me under obligations by their kindness, — the former having read Chapter XVII before it went to the printer.[2] Mr. Andrew H. Green did me the favor of reading Chapter XVIII, and Mr. Horace E. Dem-

[1] See pp. 58, 322. [2] See p. 450.

ing the favor of reading several chapters, and gave me the opportunity of much useful discussion of municipal principles, before these chapters took their final form. I am under obligations to Mr. Richard H. Dana, of Boston, for useful information very kindly supplied. It should be said that in no case are these readings referred to as evidence of an assent to the views advanced in the chapters read, but only as some assurance of my wish to have advice from those most competent to give it.

I may add that it has been many years since I first gave some study to city affairs, and had a practical part in their administration,[1] — facts which may be some excuse for offering this treatise to the public, but cannot justify its defects.

DORMAN B. EATON.

New York City, June 1, 1899.

[1] Notes, pp. 60, 411, 441.

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THE GOVERNMENT OF MUNICIPALITIES

THE GOVERNMENT OF MUNICIPALITIES

INTRODUCTORY CHAPTER. — HOW AND WHY WE HAVE REACHED THE PRESENT MUNICIPAL CONDITION IN THE UNITED STATES, AND THE PROBLEMS WE MUST SOLVE TO IMPROVE IT

The dissatisfaction with our municipal governments. Why and how they have been neglected. Why they are now receiving more attention. Municipal laws diverse and hastily enacted. Municipal experience not studied until lately. Crude opinions and false theories. Why early statesmen and constitutions did not deal with city affairs. In their time, no city problems or municipal system existed, or was needed. When those problems arose. Instructive lessons from the making of those constitutions. A charter is a city constitution. Why our charters, in broad contrast with our constitutions, are failures. Why the municipal question has been treated as a party issue. Its importance much underestimated. Why we have to create a municipal system. Relations of municipal affairs to parties. Why city affairs are no proper sphere for parties. How parties became despotic before the need of a municipal system was developed. How, why, and when parties got control of cities. Meaning of city-party system. Incompatibility of the party system with a true municipal system. When a municipal system was first needed. The great fundamental truth of a true municipal system. As to parties in city affairs. How and why parties sought to make their system absolute. When a mayor may be said to be autocratic. Relations of the party boss to the autocratic mayor. Both first developed in New York City and Brooklyn. Why to increase the power of the mayor is to increase party despotism in cities. Why city party managers desire both. Great power of the supporters of the party system for cities. Order of subjects to be discussed in this treatise. Diversity of opinion as to what are the great municipal problems. These problems explained, and how their solution may be most easily accomplished.

AMONG the most intelligent people of the United States there is a pervading feeling of profound dissatisfaction with the governments of their cities and villages. They think these governments unworthy of the citizens who live under them, and they contemplate with solicitude their prospective condition. To see clearly how and why we have got into a bad situation may greatly aid us in getting out of it.

I. During many years the dissatisfaction and anxiety on these subjects have led to numerous experiments in municipal construction, and to the enactment of multifarious municipal laws. In the main both the laws and the constructive methods have been hastily devised according to theories inconsiderately accepted, and there has been no adequate investigation of the history or nature of the great municipal problems which they involve. With rare exceptions, American statesmen have not, until very recently, given thoughtful attention to municipal affairs — these affairs not having been regarded as within the function or sphere of statesmanship. There have been but very rare attempts in our schools for teaching governmental science to give any instruction as to the true principles or methods of municipal government; and these matters have had no place in our political platforms. The activity concerning them has been rather on the part of the local politicians and a few advanced reformers, than on the part of the thoughtful and patriotic people generally.

Within the present decade, however, these people — justly alarmed at the growing municipal evils — have become much interested in the municipal question, the gravity of which they are beginning to appreciate. Within this period they have created multitudinous organizations, extending to all the large and many of the small cities and villages of the Union, for dealing with these subjects. A National Municipal League and a National Conference have also been created, at whose meetings this question and the ominous significance of our municipal condition have been considered. Within the same period several able writers to whom we shall refer have treated these subjects with ability and learning.

If these organizations seemed, at first, to regard the problems to be solved as requiring little more than a selection from the miscellaneous municipal devices which American legislation can supply, — their proceedings hardly presenting the need of a study of municipal history and principles, — it is yet true that a more comprehensive and

adequate view of the subject is now being taken and seems likely to be vigorously urged upon the attention of the people. Nevertheless, these organizations and authors, we must think, have rendered a very valuable public service. They have awakened public attention; they have done much to make it plain that no superficial or merely empirical dealing with our municipal affairs will give us tolerable city government; they have made it clear that great questions of principle are involved which require a careful consideration both of our constitutional system and our party system; they have shown that there are instructive lessons of municipal history and experience, both in this country and in Europe, the study of which — lamentably neglected as they have been in the United States — would elevate our ideals and enlighten our efforts in aid of our municipal betterment.

II. The light thrown upon these matters has not only made it appear that we have, in the United States, no original or generally accepted municipal system, but that we have no practical methods generally accepted by our cities from the enforcement of which competent judges expect satisfactory results in the future. We not only have no city government which — even in leading outline — can be taken as a model, but we have no theory, concerning the appropriate powers of the great city departments or officers, which finds general acceptance. Even upon such vital and fundamental questions as these: What are the just relations of the city to the state? Whether the mayor should be an autocrat and dominate the city legislature? What is the proper extent of Home Rule in cities? Whether tests of party opinion should be applied in the choice of city officers and employes? Whether party government is desirable for cities and villages? — there is a stubborn, belligerent, and pervading diversity of opinion among the great body of intelligent people. If thoughtful citizens generally are now ready to read and think about city affairs, — and many of them seem ready to study their problems, — it must be admitted that in the past, most of these people have done little

more than glance and grieve over municipal affairs — leaving them, all the while, mainly to the politicians. Such abuses, dissatisfaction, and contrariety of opinion as have prevailed have caused much discouragement as to the possibility of good municipal government in this country. They have also facilitated the adoption of crude and hasty experiments — there having often been a desperate feeling in cities that there can hardly be any city government worse than they now have, and a vague hope that any radical change may prove to be a reform.

III. It has been sometimes said, with something like despair, that our early statesmen who framed our national and state governments — in which we all have confidence and to which the world more and more inclines — failed to devise a municipal system, perhaps feeling that they could not, and possibly fearing that such a system is unattainable under a republic. Such inferences, we must think, are quite unwarranted, and the facts by which they are confuted deserve our attention at the outset.

IV. At the time of our original national and state constitutions were formed — or even as late as 1790 — neither large cities, nor the characteristic evils which such cities or bad municipal systems most develop, existed in this country. The population of Philadelphia, at that time, was about 42,000, that of New York City was about 33,000, and that of Boston was about 18,000 — only 93,000 residents, therefore, in the three foremost cities of the nation. The urban residents of the state of New York, which were then less than ten per cent of its people, are now more than fifty-eight per cent of its inhabitants. Neither the Declaration of Independence nor the Articles of Confederation refers to any evils in connection with city government. The national constitution says nothing in regard to it. The first constitution of New York, adopted in 1777, makes no mention of municipal government or affairs, except to declare, in substance, that this constitution shall not annul any charter granted in England. It was not until 1821 that any constitutional provision, in the state of New York, took

other notice of municipal government, and such were the facts, generally, in other states.

Up to this time, apparently, there were no municipal problems; there were no municipal evils — certainly none which had arrested the attention of people; not even in the imagination of the thoughtful was there a conception of the great fact that there was a whole department of government — that of municipal affairs — of which our fundamental constitutions and early statesmen had taken no notice, — a department nevertheless soon to become so potential and ominous as to make statesmen anxious, as to impair the independence of legislatures, as to cause those who should control it to grasp at the nominations of senators, governors, and presidents. We are, therefore, to deal with new evils — against which the fathers attempted no provisions — evils which the most recent generations, and the vast growth of city life, have developed, — evils which we of this generation have allowed to originate and grow before our own eyes.

V. The national constitution, and the first constitutions of the states, — nobly original and wise in their provisions, — were so admirably framed as to make them models. They need no change in their general structure by reason of the new municipal developments. They deal adequately with the needs and evils that existed. There is no ground, therefore, for discouragement because they did not provide for needs and evils which would arise only in a subsequent generation, which only the growth of great and numerous cities, and their control by political parties would develop.

Yet the method of making these constitutions has an important lesson for us in the discharge of our duty of creating a municipal system — of supplying that department of government which the great authors of our constitutions did not undertake. They made a careful study of liberal government in other countries and times, and availed themselves of the wisest lessons of history. The Federalist is a striking illustration of their comprehensive investigations, which extended to all former governments likely to supply

useful instruction. They were not too proud to learn from every source of wisdom. The ablest statesmen were selected for the creative work of these constitutions, and they engaged in it during the long sessions of formal conventions, taking ample time for their work.

Now, what a constitution is for a nation or a state, a charter should be for a city. It should be a definite, deliberately matured, general statement of its powers and functions, making it clear upon what subjects it may act and the extent of such action; and there is no intrinsic impropriety in designating the charter of a city as its constitution.

The American people are only beginning to comprehend the dignity and functions of a good city charter or constitution, and the vastness and variety of the interests it may affect. They are beginning to see clearly that to make such an instrument requires as much investigation, wisdom, and deliberate action as are required to make a state constitution; for if the latter is more comprehensive, the charter must be an original creation in this country, and must be achieved under very great difficulties, as we shall soon see. The people have hardly yet imagined what will be the gravity of the situation, if our city governments be not much improved, when, in the not remote future, a majority of the American voters, in many states, will dwell in cities. They are convinced that, to treat the making of a national or a state constitution as a proper work for a party majority acting hastily for party ends, would be a grave perversion and calamity; but a majority of them do not yet see that to make a city charter in the same way and for the same purpose, would be not less indefensible and disastrous.

VI. There can hardly be found a more striking contrast, connected with similar subjects, than is presented between the results of our framing of national and state constitutions and of our attempts to frame city constitutions or charters — the grand success of the former and the humiliating failure of the latter — unless it be found in the different means by which we have attempted to accomplish these objects. Yet, all the mystery of the contrast disappears when we consider

the facts. Instead of acting in regard to charters thoughtfully, deliberately, and in a non-partisan spirit — enlightened by the experience of the past, as we have in regard to constitutions, we have considered the municipal problems in a partisan spirit in the main, leaving them to be dealt with crudely and summarily by, and in the interest of, party majorities and party leaders. We have acted as if a city charter were only an ordinary party measure of mere local lawmaking about which statesmen, the great body of the legislators, and the people generally need not much concern themselves.[1]

This habitual underestimate of the dignity, importance, and significance of municipal problems has naturally resulted in many crude and mischievous laws and in that party despotism in city affairs which is a main cause of the greatest municipal evils.[2]

VII. It is impossible intelligently to consider the great city problems before us without a clear view, at the outset, of their relations to parties, and of the extent to which parties are responsible for them.

The nation and the states, by reason of their broad geographical limits — yielding many productions which compete with each other, and naturally developing diverse, conflicting interests — present legitimate spheres for parties and competing party principles and policies in the field of legislation. Our national and state constitutions allow the free action of parties within such spheres. These spheres of party action are independent of mere city affairs — having existed before cities arose. Parties were organized and had

[1] The new charter for the Greater New York enacted in 1897, after most of this treatise had been written, was a party enactment, very hastily and crudely put together. It was never read, nor were its provisions ever debated, save in a technical, useless way, before the legislature. We have not been insisting that the granting of every city charter should require deliberate proceedings analogous to those needed for framing a state constitution, but only that the devising of a good municipal system, the framing of a state municipal code, which should set forth the general provisions subject to which all charters should be granted, and which should constitute the main features of all charters, requires this deliberation, as we shall more fully show.

[2] There is one instructive example of the deliberate making of a city charter, by a city convention in New York City in 1830, before party despotism had become irresistible. *Mun. Prob.*, 3.

developed their useful methods of influence before cities of political importance existed in the United States — and long before cities became a distinct or effective political power. State and national parties would continue with all their usefulness if all the cities were destroyed.

Parties, unless strongly restrained, constantly tend to transgress their legitimate and useful methods and sphere of activity — continually endeavoring to enforce their irrelevant tests of opinion, and to dictate action in their own interest, in the domain of mere administration and governmental business. They constantly treat all the small offices and the extortion of political assessments as a means of gaining party spoils and despotic power. American parties had notoriously done this before 1833, when Senator Marcy declared, in the national Senate, that "to the victors belong the spoils." At that time a stupendous and growing spoils system had been developed — a system springing from party usurpation and despotism, which continued to increase until 1883, when the national civil service law curtailed it by requiring non-partisan examinations of merit and character for appointments to about 14,000 official places — examinations which have been since extended under this law by reason of their salutary effects, — so that they are now applied to more than 87,000 places. Here is an immense restraint upon party usurpation, despotism, and corruption, which is sure to be soon extended to all positions — including city administration — for which it is appropriate.

VIII. Before 1833, the number, population, and wealth — and consequently the political influence — of cities had vastly increased. But no good municipal system had been developed, and no carefully matured municipal methods had found general acceptance in the United States. Party government in national and state affairs — not only within its legitimate sphere, but within the usurped spheres of mere administration and governmental business — had become aggressively potential, and had secured general acceptance — the remedy of civil service reform not having been then even imagined. The teaching of municipal science was un-

known, and a thoughtful consideration of municipal government hardly existed, even on the part of the most advanced thinkers. Even enlightened voters had no conception of the nature or significance of the municipal problem. Perhaps no one had asked the question whether parties could properly govern in the local affairs of cities. The theory of municipal Home Rule was not merely unevolved; both the phase and the conception were unknown.

It was natural and inevitable, under such conditions, that political parties should grasp for the control of cities and villages and extend their party tests and spoils system methods over them. Nowhere else could parties so effectively organize, find so many subservient voters, grasp so much patronage, or so easily extort large sums of money and other spoils — in a space so small and easily dominated — as in cities. City party government which enforced party tests of opinion for all offices and places in the city service, was, therefore, quickly extended to every city and village, equally without consideration of its fitness and without resistance. The true municipal reformer, the civil service reformer, — or any body of independent, enlightened thinkers on the subject, — had not appeared. If some managers, in cities, could see that their party system had no fit place in city affairs, it was too much to expect that they would advance a theory to that effect, for it would not only defeat their own advancement in their party, but if accepted, would deprive it of a large part of its power and patronage.

IX. Few things are more indisputable, among the elementary facts of government, than this: that the party system and a true municipal system are repugnant and irreconcilable. Parties, whether formed in the sphere of the nation or in that of a state, claim jurisdiction to the borders and in every local jurisdiction. They insist that all local interests must be conformed to the general party policy, and that their platforms and principles must be accepted in every locality and by every officer; they conduct public affairs through officers and agents who must conform to the tests of opinion and policy which the central party organization

has established; they carry on administration according to theories and methods which must be enforced in all political divisions, — in every city and village, — every one of which must subordinate its own interests and affairs to the policy of the nation, or the state, as the central party — or its managers — shall define them. The theory that a city may have local affairs which should be managed in reference to its own interests, irrespective of mere party interests or divisions, is obviously repugnant to all this, and is sure to arouse party antagonism.

The party system may naturally arise as soon as broad territories have come under established government; but the municipal system can naturally arise only after dense city populations have discovered the inadequacy of general laws and the party system for the protection and advancement of their local interests and needs. Therefore, a true municipal system is necessary — and is likely to be developed — only after some of the cities have disclosed local needs so great, and local abuses so grave, under party government, as to make such a municipal system indispensable. It seems plain that a true municipal system would require officers and employees for its administration who should disregard mere party opinions, and constantly strive to promote the interests of the city rather than those of any party.

City party government, on the contrary, is one based on the theory that state or national parties may properly control the affairs of cities — may appoint their officers and employees — by reason of their party opinions; and may manage city affairs in paramount reference to party principles and interests. City party government, therefore, is an obvious and utter repudiation of the fundamental theory of civil service reform, which, disregarding mere party opinions and favoritism, puts men into office solely by reason of superior merit.

X. The development of cities obviously has not created additional party principles, or a need for new parties; nor has it created new party politics to be managed. What has been created by the development of the great city is new

perils for life and property resulting from greater density of population, more local complications and relations between citizens, more local administration and governmental business, which should be conducted and regulated according to sound business methods. If the great cities should all be burned, or their residents should make their homes in hamlets, parties and their functions would remain as complete and useful as they had been before such cities existed. Nowhere are party contests more salutary or their principles better defined than in Vermont, which has never had a large city or any municipal evils. Elsewhere we shall make it very clear that no particular party opinions are any part of the qualification needed by city officers or employees, and that all citizens should join, irrespective of their party affiliation, in securing good government for municipal corporations, as they do for securing it for other corporations in which they are interested.

XI. The great central, fundamental truth, at the basis of the municipal problem, is this: that a municipal system — reasonable city Home Rule — is needed at all only because the state and national governments, almost invariably controlled by parties, have, in city affairs, been found inadequate and intolerable; the new developments of interests and needs in municipalities having created a necessity for additional and peculiar government for their affairs. Therefore, to say, when a charter is to be granted to a city, that it should be in its organization, or methods, according to the former party system, should apply party tests for office, is quite preposterous. It is, in fact, to repudiate the new necessity which has made true Home Rule indispensable. Therefore, we repeat that the simple, vital fact is that the governmental powers which city governments need to possess are the precise powers which ought to be exercised in cities regardless of mere party interests, and in primary reference to the cities' own needs and welfare.[1] Therefore,

[1] Some explanation may be needed here. The state may for convenience, and often does, allow officers elected or appointed under the city government to exercise important state authority strictly in the state's behalf and as its agent.

worthy men of whatever party may officially exercise, side by side, any of these Home Rule powers, — administering the city government in reference to its own advantage, irrespective of state or national politics.[1]

XII. When the party system had been thus extended over all city governments, nothing was more natural than that its managers should seek to make it absolute and irresistible, especially after the party spoils system had been established. Every advocate of non-partisan municipal government, or true city Home Rule, was especially obnoxious to these managers. The issue between the supporters of such a government, on one side, and the city-party system, on the other, more and more tended to become, what it now is, the greatest and most fundamental of all the issues of city government in the United States. Party obstruction is now — with the party spirit it develops — the most formidable obstacle in the way of rational Home Rule and good government in American cities.

The more party government in cities has been threatened by the independent public opinion, which demands Home Rule, the more the party managers have insisted upon such an organization of city government and such restrictions upon the right of nominations as will be most favorable to their supremacy, and make the spoils system most profitable to them. When, therefore, the control of parties had become despotic in a few persons under that system, and especially after the power of the party boss had become autocratic, it was natural for scheming politicians to see that cities might as easily be governed by an autocratic mayor, whom the city

General powers thus conferred require peculiar responsibility to the state, and involve peculiar relations to parties, which will be considered in the next chapter.

[1] It is not intended to say that under a true, non-partisan municipal system no divisions among the voters should, or can properly, arise as to city policy or methods; but merely to say that these divisions of opinion can properly arise only in relation to city affairs — and not in relation to national or state affairs — which are not legitimately involved in city administration; in other words, we say that city voters, in city elections, should not take sides, or fall into divisions, as state or national party men. They may, however, divide, independently of state and national politics, in reference to city interests and policy so far as they differ in opinion on these subjects. This matter will be more fully treated elsewhere.

party majority should elect, as a party could be governed by an autocratic boss, whom party managers should elect.[1] The step from one to the other therefore is naturally and easily taken. The powers of the mayor were rapidly increased until he was made as autocratic in the government of the city as the boss was in the government of the party. In the cities of New York and Brooklyn, where the party boss system was first developed, the autocratic mayoralty system was also first established. In fact, an autocratic mayor — a sort of official city boss — is hardly possible until after the unofficial party boss of the city has been developed; and the latter seems sure to dominate the former. The autocratic mayoralty inevitably caused the city council to become little more than a useless subordinate of the mayor, and led to constant state intermeddling in city affairs, — for we have not yet dared to confer full power for city legislation upon mayors.

Mayors have naturally become most autocratic where bosses have been made most despotic. Every boss and party manager could see that the more the authority of the mayor should be enlarged the more absolute would become the power of the party majority by which both the boss and the mayor would be chosen. In this way the question "Whether we desire city government by parties?" and the question "Whether we desire an autocratic mayor?" have become substantially identical. They are, in fact, about the most fundamental and important questions which can arise concerning city government.

XIII. The supporters of party government for cities are a mighty power, backed as they are by the unworthy managers, — the machines and selfish interests of all parties, — who

[1] The meaning and consequences of an autocratic mayoralty will be considered elsewhere. It is enough to say here that a mayor is autocratic when he has, in general, an absolute power of appointment and removal, city councils being deprived of their legitimate powers to augment those of the mayor, or that of the commissions whose members he appoints. The City Council is thus degraded in the degree that the mayor is exalted — or made a city-party despot. The new charter for the Greater New York presents the most conspicuous and disastrous illustration of such a mayoralty.

make their greatest profits from controlling city party politics and elections under that kind of government, and boss despotism, as the Tammany democracy has long since shown us. We shall find it necessary to deal, in some detail, with the vicious and plausible theories and methods in which their system finds its chief support.[1]

XIV. This review of municipal progress, and of the present situation in the United States, seems to make clear the order in which we should consider the subjects to be treated.

(1) That habitual underestimation of the character and difficulties of our municipal problems, which has caused many persons to think they can be solved by mere separate city elections and by the easy remedy of conferring large and absolute powers for city Home Rule, requires us to test, in the outset, the value of these remedies. We shall, therefore, consider them in the next chapter.

(2) The legitimate relations of parties to Home Rule and to city administration are so fundamental and important that we shall deal with these subjects in the next succeeding chapter.

(3) As many of the existing charters and municipal laws — which have been largely framed in the interest of city-party supremacy — as well as the party methods and theories which are generally accepted by voters, are among the serious obstacles in the way of a good municipal system, we shall give the three succeeding chapters to these matters — taking and dissecting the party system of the Tammany democracy of New York City as being the most conspicuous and characteristic example of them — toward which vicious party politics in many American municipalities seem to have been tending. We shall try and make plain — irrespective of any particular party — the true character of the city-party system and its effects upon the government of cities.

[1] The need of this is made more imperative by the fact that, since all but the last chapter of this treatise was drafted these supporters have caused a more absolute system of party government to be imposed upon the Greater New York City — with more autocratic power in the mayor than has ever before been imposed upon any enlightened city of the world — a subject which will be considered in our final chapter.

(4) Hoping we shall be able to clear the field of various obstructions, and to reach some just conclusions, we shall next enter upon the constructive and remedial parts of our undertaking, to which many chapters will be given.

XV. There is doubtless a wide diversity of opinion as to what are the principal problems of city governments in this country. If these governments generally secured officers and employees competent for their higher functions, the great and primary city problems would directly relate — as in a certain sense they do even now — to the proper action of such officials for causing better city morals, schools, courts, and police, improved health administration and more enlightened charity, better city transit, lighting and architecture, the best methods of doing the public work, and whatever tends to make cities beautiful and attractive.[1] But such achievements, in any high measure, will remain impossible until we shall be able habitually to bring citizens of high character and capacity into the official leadership of our municipal affairs. To do this, therefore, is the foremost and most vital problem — after which the solution of every other will be both possible and easy.

Those who favor the government of municipalities through party action and majorities will give precedence to very different problems. Among them will be the proper method of making nominations only by city parties; regulating the primaries, and managing city-party politics and elections; effective devices for apportioning city officers and laborers as patronage among small city districts; increasing the powers of the mayor, and keeping city governments in strict subordination to party interests in state and national politics. We hope to show that the establishment of a sound municipal system will destroy most of the basis of fact and assumption out of which these problems arise.

XVI. In aid of solving *the supreme problem of bringing competent men into the official leadership of American cities*,

[1] What is possible in these particulars is illustrated in the chapters on English and European Continental cities, in which superior officers, and consequently much better city governments, than those in the United States have been secured.

we must solve these, among other, minor problems: How to increase the dignity and importance of good municipal government in the estimation of the people; how to separate our municipal affairs from party politics; what is the proper measure of powers for Home Rule which should be conceded to cities and villages; how to frame city laws, codes, and charters which will clearly define these powers and avoid needless and vicious appeals to the state legislatures; how to constitute truly representative, non-partisan city councils with adequate authority; how mayors should be elected, and what powers they should have in order to make them competent executives without being partisan despots; in what way the police force and the municipal justices may be made free from party domination; how to cause a representation of the whole people, instead of mere party majorities, by providing for Free Nominations and Free Voting in city elections; how so to diminish the number of elected city officers and so to extend their official terms — and promotions for merit — that there will not be a needless number of city elections, while the people will none the less control their city governments, and the city partisan managers will lose much both of their vicious occupation and of their needless power for mischief.

CHAPTER II. — THE NATURE OF THE EVILS IN AMERICAN MUNICIPAL GOVERNMENT, AND SEPARATE ELECTIONS AND HOME RULE AS REMEDIES

Evils in city government growing more serious. Their nature stated. Our inferior city officials are a condemnation of our city system. We are to deal mainly with the structure and administration of city government. City parties a main source of abuses. Separate elections as remedies. Nature of Home Rule. Duty of allowing it. Basis for claiming it. Not an absolute right. Dangerous and false claims made in its name. Theory of state interference. Relative rights and duties of city and state. How far state and nation govern in cities. When a city may fairly claim larger powers for Home Rule. Cities send unworthy members to legislatures. Cities cannot reform themselves under party government. Wise conditions of conceding Home Rule. Evil effects of false theories on the subject. Legislators from cities not competent. Theory of making cities free. Theory that interests of state and city are opposed. Danger that cities may conspire to rule state. Theory that greater Home Rule power would cause cities to do better. How far cities act as state agents, and need state inspection. Utility of such inspection, and of requiring reports to state from cities. Reports would not restrict Home Rule, but would make it safe to enlarge it, and would diminish need of special legislation. Experience of England on these subjects. Need of a State Municipal Bureau or department. The state inspections we now enforce justify a state inspection system for cities, with authority to investigate abuses. State inspections and reports from cities would enlighten the legislature.

No department of government in the United States is so inadequate, none has been the subject of so much dissatisfaction and solicitude on the part of their people, and none has been so severely criticised by candid writers from abroad, as that which relates to municipalities. The larger the city or village, the more unsatisfactory, as a rule, has been its government, and the greater its administrative abuses; so that, from the smallest, each can see in those of a larger population the greater evils it may soon have to encounter.

The importance of the subject is enhanced by the facts that the facility of intercourse between the city and the country, the influence of city life, the proportion of the whole people who reside in municipalities, and the political power of their residents, are rapidly increasing; while more and more territory is being added to cities. City standards and

vices, city theories and usages, city fashions and literature, not less than the methods and corruptions of city administration, are becoming more and more potential and pervading. The power of the cities seems likely to become almost supreme in no very remote future.[1] It is hardly too much to say that the character — if not the fate — of republican government in the United States depends upon the ability of their people to provide a good municipal system.

I

There is no need of setting forth in much detail the evils connected with our municipal affairs, for they are both well known and undeniable. The problem of municipal government is by common consent the most serious and difficult in our politics. It is enough to say that the municipal government which prevails is needlessly expensive and generally condemned; it is inefficient; its methods bring the worst voters to the polls and largely repel the most worthy; it has caused city administration to be generally regarded as discreditable to the American people and a scandal to our republican system; it stimulates intense and needless partisan contentions in municipalities; it has caused excessive and mischievous special legislation for cities and villages and prevented the enactment of wise, general laws for their government;[2] it discourages unselfish devotion to the public

[1] In the state of New York before the Greater New York City was created, two cities elected 18 of her 50 senators and 56 of her 150 assemblymen, under her amended constitution of 1895; and it in substance provides that in the future no city shall elect more than one-half of them — so great is thought to be the danger of city domination.

[2] It seems that from 1884 to 1889 the legislature of New York passed 1284 separate laws relative to the thirty cities of the state, of which 390 related to the city of New York; and that in 1886, 280 of the 681 acts passed related to some particular subdivision of the state. (Goodnow's *Municipal Home Rule*, 23, 24.) A New York statute known as the consolidation act of 1882, made up of laws applicable to New York City, contains 2143 sections, yet falls far short of containing all such laws. In the period from 1890 to 1897, inclusive, there were 2793 special laws passed relating to the cities of the state of New York — 564 of them related to the city of Brooklyn and 1399 of them related to the city of New York. The year in which the least number was enacted as to the latter city was 1891, when there

interests; it causes and condones bribery at the elections; it has constantly brought inferior and unworthy men into the municipal service; it has made official malfeasance a common offence in cities, and has familiarized the people with official connivance at the levying of blackmail; it has provided too short terms of office and made too many offices elective largely to serve party ends; it has caused many citizens and corporations to corruptly employ party leaders to protect their rights instead of discharging their duty to defend them; it has developed a demoralization and corruption in municipal politics, which the persistent efforts of the most unselfish and patriotic citizens can hardly hold in check; it habitually subordinates municipal interests and duties to the advancement of mere party ends in state and national politics; it has made the management of municipal politics and elections a degrading business by which a class of useless and vicious politicians prosper; it has divided the natural friends of good municipal government between the ranks of hostile parties, which, in the main, contend over issues irrelevant to municipal affairs; it has developed a degrading and corrupt system of city boss-rule; it has established an autocratic mayoralty which favors despotic party domination; it has caused the moral standards of official life in our municipalities to fall below the moral standards in private business — causing municipal officers, generally, to think it a less crime to defraud the whole city than to defraud a single citizen; it has caused city and village politics and administration to become, to a large extent, sources of vice and corruption, which are diffused through the country; it habitually uses official power and public offices to gain party votes and private advantage; it has caused many citizens and corporations, not otherwise corrupt, to pay blackmail to partisan officials both from fear of oppression and hopes of favors; it quite generally brings into municipal offices and employments men of a lower moral character and business

were only 95, but in 1893 there were 288 of these special laws, and in 1892 there were 259. The New York charter of 1897 contains 1620 sections, filling 599 pages of the statute.

capacity than could gain analogous positions in private affairs; it has not only degraded the ideal of what municipal government may be, and should be, but it has made its reform seem to many hopeless;[1] it has caused elections in cities and villages to be regarded by many voters as little more than contests for selfish and partisan ends, in which it is almost useless for disinterested and patriotic men to take any part. Speaking generally, it may be said that the leading American writers on our municipal affairs treat them as presenting the most serious failure and problem under our government, and the ablest and most friendly of foreign critics — the author of the "American Commonwealth" — has just declared "the government of cities to be the blackest spot in American politics."[2]

2. To justify a condemnation of our municipal system, if indeed we have such a system in the United States, we hardly need look beyond the simple facts that it is not the gifted, the noble, or the honored men who generally hold the highest municipal offices, but scheming politicians, selfish, adroit party managers, or men of very moderate capacity and often of not very enviable reputation, who would not be desired at the head of a large private business. When men of a higher order are made mayors, they have not infrequently got their places under commitments to degrading influences by which they are much trammelled.

3. Municipal corporations are in their nature the most honorable, dignified, and powerful corporations known to our laws, and, if fitly appreciated and governed, they would easily command for their official service the worthiest and ablest citizens. But there are in fact, on every hand, corporations of various kinds which have officers quite superior to those who generally manage the affairs of our municipalities. Until we shall, habitually, bring such able and worthy men

[1] Professor Goodnow says the ordinary American municipal officer does not regard it as his duty to see that the laws are observed, but merely to see that the complaints of individuals, if sufficiently persistent, are examined, and "if considered advisable, attended to." *Mun. Prob.*, 304.

[2] *Contemporary Review*, November, 1897, p. 758.

into the high offices of our cities, our methods of governing them will stand self-condemned. Until we shall feel personally disgraced by their absence, and they shall feel personally honored by their selection for municipal offices, we shall, as a people, proclaim ourselves before the world as apparently incompetent for good, municipal self-government.

4. The primary problem of such government — the fundamental condition of good city administration — is that of bringing such men into the municipal offices. It cannot be too emphatically declared that among a free people no other evidence should ever be thought necessary to condemn their municipal methods and condition than the simple fact that they allow inferior, unscrupulous men — mere politicians and partisans — to hold the leading offices.

II

An adequate treatment of our municipal problems would include, on the one extreme, a presentation of the educational, moral, and religious forces — and of the means of making them effective — in which better municipal government must find its ultimate strength, and in behalf of which the preacher, the teacher, and the patriot must unite their potential voices; and, on the other, the consideration of many questions of detailed methods and business management upon which the efficiency and utility of municipal government largely depend. But from both these fields we are, to a considerable extent, excluded by the limitations of our subject, which is the structural and administrative problems of such government. Yet, these problems will draw into the discussion by far the most potential and vicious forces, — the forces of party, of faction, and of selfish and corrupt interests, which, in the main, have made these governments what they are for evil.

All well-informed persons, in pondering the evils referred to, will take notice of the facts that among the most direct forces in their development have been parties, factions, and their managers, bosses, and minions. Parties have brought

the most degraded voters to the polls, and have done most to coerce and bribe their use of the ballot. They have controlled the patronage and spoils in city affairs which have been most degrading, and have given the worst municipal servants their places. They have caused fraudulent naturalizations and registrations, and have profited by blackmail. They have raised, and their agents have disbursed, most of the money which has been effective for bribery and other municipal corruption. The persons, for example, who have been most directly concerned in the notorious prostitution of municipal affairs in the city of New York have been the managers of one of the great parties, — often in conspiracy with the leaders of the other, — while in Philadelphia the other party has had the lead in a similar prostitution.

These facts certainly do not prove that parties and their contests are the primary cause of the grave evils in our municipal affairs, for it may be declared with much truth, and often is declared, that the selfishness, the ignorance, and corruption of the people individually are their primary sources, to which parties have but given an intense and conspicuous expression. Here a great problem is involved: the question how far party, and how far the individual, is responsible for our municipal condition. The declaration just referred to tends to the conclusion that our municipal party system and methods are as good as the people deserve, or are capable of supporting, and that, consequently, no great reforms are possible, save at the hands of a purer and better — and hence a future — generation, more nobly instructed and inspired for the duties of citizenship.

We cannot accept this pessimistic and discouraging view of the matter, though it contains some truth. It omits, and refuses to recognize, the vicious effects of governing cities by national and state parties, — the false and irrelevant issues they present, the corrupt methods they devise and employ, the besotted party spirit they develop, — as being in themselves constant and potential forces in causing such evils. These are forces which city parties, in the main, originate, and they would cease to be effective if party organization and

methods for ruling cities in subordination to national and state party interests were abandoned — as we think they should be. It is our view that the present generation, even within this decade, is able to devise and support a much better municipal system than we possess, vast and difficult as the undertaking certainly is.

While much that is evil in our municipal affairs is the direct and inevitable consequence of the pervading selfishness, ignorance, and low moral tone of many of the people, we shall nevertheless endeavor to show that much more of it is the result of bad municipal theories and methods, of blind, misleading party passions, of needless and demoralizing party action. If to develop loftier ideals and a higher sense of duty is the greatest endeavor, it is yet worthy the efforts of statesmen to secure greater blessings from better methods of governments during the generation in which they live.

To justify these views as to present possibilities, we shall need to carefully dissect the prevailing party system and to point out the manner in which many existing evils have been developed by it. It will not only be necessary to call attention to the nature and tendencies of city parties themselves, but to challenge the soundness of various accepted theories concerning both parties and municipal government.

It will be best to deal with two of these theories at the outset, — that of separate elections and Home Rule, — because they are fundamental, involve some unwarranted assumptions, and propose only superficial measures when far more comprehensive and radical remedies are essential.

III

Separate elections for municipal officers are urged by many persons as if they would, in themselves, insure a sufficient remedy for municipal evils. Such elections we must think are very desirable for these reasons: (1) they recognize the great truth that municipal candidates and policy should be treated separately upon their own merits without control-

ling regard for external party issues; (2) they would facilitate the citizen's voting independently as to municipal matters; but they do not insure him a real liberty to do so, or materially weaken the partisan bias, coercion, or passions which now control so many voters; (3) they would render it somewhat more difficult to make effective bargains and deals between the managers of city factions and the managers of state and national parties; yet, they would but little affect any of the sources from which such abuses spring. At most, separate elections would do little more than bring voters into a better position for using appropriate forces for the more difficult work of reform, — for after such elections shall be established, this work would remain to be done, — as the battle remains to be fought after the best positions are selected by the opposing forces.

On the other hand, parties and their managers are always ready for the most numerous elections; for, through them, they gain both their power and their profits. Their electioneering forces and machinery are always ready; and very likely they might not oppose separate election days for every separate class of officers. Everywhere, party despotism in cities has tended to increase the number and frequency of city elections, — as we shall have occasion to show. Besides, experience in the state of New York and elsewhere seems to have shown that the separation of state elections from municipal elections has not been followed by any very salutary results; nevertheless, we think the decided balance of reasons is in favor of separated elections, especially if we do not expect too much from them, or allow them to prevent the making of more adequate efforts for municipal reform.[1]

[1] Mr. Conkling tells us that New York has twice had separate elections for city officers and has once abandoned them; that all the cities in the state of New York except three now (1897) have such elections, and that they are provided for all other large American cities except Baltimore. (Conkling's *City Government*, 193.) He calls attention to their great cost, but we cannot regard this as a decisive objection. Professor Goodnow has presented a view of separate elections hardly more favorable than that expressed in the text. (*Municipal Problems*, 210.) The New York Amended Constitution of 1894 has provided for separate city elections.

IV

The subject of Home Rule for municipalities — the question how far their residents should be allowed to control their local affairs — is one of great importance, as to which there seems to be much confusion of thought. A broad division of opinion on this subject greatly complicates the whole municipal problem. We believe in a much larger authority for municipal Home Rule than is generally conceded to American cities, and shall endeavor to show on what conditions it may be safely conceded.

It is quite in harmony with our republican system, and highly desirable, that public authority should not be needlessly centralized, — that it should be as directly and largely exercised by bodies and officers of local jurisdiction as is compatible with just and efficient government for the nation and the states. Indeed, one of the paramount objects in the creation of cities and villages — as in the creation of towns, counties, and even of states — is to facilitate the local control of their truly local affairs. The government of each of these jurisdictions involves a common principle and policy.

The problem of Home Rule, as we ought to clearly see at the outset, raises not only a question between cities and states, but one between the states and the nation; for the pretended right of secession was but a phase of the question of Home Rule. The subject needs to be considered on the basis both of principle and of policy. We ought to clearly see at the start that if a city has an absolute right to control what it may be pleased to call its own affairs, a village, a town, and a county have the same right. These principles are indisputable!

(1) Subject to the paramount power of the national government, each state, under our constitutional system, is supreme and sovereign throughout its own borders, — as well within cities and villages as within rural counties, towns, and school divisions. No one of these divisions, as a rule, has any political rights or authority save that which the state

concedes and recognizes.[1] Within all parts of its jurisdiction there is both an authority and a duty on the part of every state — and also an obligation on the part of all of its citizens — to take care that the enforcement of its constitution and laws are such as will most contribute to the welfare of the whole people of the state, without discriminating locally in favor of any portion of them at the cost of the others, whether they reside in cities, villages, or towns. For the state to neglect its duty, or to surrender such authority, would be treason to itself and disastrous to the well-being of its people.

(2) Morally considered, no local divisions of a state, whether it be a city or a town, can have any right to special authority or exemption, for its own peculiar advantage, in derogation of the general welfare, nor can any state justify itself in granting or allowing either. Nor, on the other hand, can any state rightfully refuse to a city or village, any more than to a town, any special authority for regulating its local affairs which will be most to its own advantage, provided it be not at the same time a detriment to the people of the state as a whole.

(3) Legally considered, the claim of right, on the part of every city, village, or town, to regulate its own affairs is a mere question — to be decided by the proper courts — as to the true interpretation of the constitution and laws applicable to them. It hardly need be said that on every basis of justice and law according to which a city or village may claim a right to Home Rule, a county and a town may make a like claim. The state, in short, has a duty to govern every part of its people and territory — the city and the forest equally — in the way that will be the best for the whole of them.

The state legislature may, as national and state constitutions allow, properly create, amend, and repeal all charters

[1] Dillon's *Mun. Corp.*, 145; Goodnow's *Mun. Home Rule*, Chs. IV. and V.; Goodnow's *Mun. Prob.*, Chs. III. and IV. Professor Goodnow's timely and instructive volumes may be read with great advantage by those who have indefinite notions as to the nature and limitations of admissible Home Rule.

and laws applicable to cities, villages, towns, and counties, for the simple reason that the state is greater than any of its parts, and the whole of its people have rights and interests paramount to those of any portion of them. The whole question, we repeat, as to this alleged right of a city, town, village, or county to govern itself in any particular is, in a moral sense, only this: Will such self-government most contribute to that general welfare of all the people of the state which the state has a supreme duty to promote?[1] and, in a legal sense, is no more than this: Will the courts decide that the laws confer the right claimed? And it is the opinion of the state and its courts, and not the opinion of the city, village, town, or county, or its courts, which must finally decide both these questions. Any theory of Home Rule incompatible with these conditions is false in principle and tends to insubordination, to internal conflicts, to disintegration and rebellion.[2]

(4) The pretended claim of right in a moral sense to govern themselves, made in behalf of cities or other local divisions, and also the alleged duty of the state to concede it, are strong in the precise degree that they have shown, or actually have, a greater ability and disposition than the state to govern well within their local limits. If the state could and would, through its own officials, govern cities and villages better than they can, or would, govern themselves, who will claim that any authority for local self-government should be conceded? If, on the other hand, larger powers for local self-control than American cities now have would result in better local government, who would justify their refusal?

2. It should be regarded as fundamental that authority for Home Rule is one to be conceded for improving and not for degrading local government, or morality. Therefore, if a city or a village, by its own local vote, asks for authority to close its grog-shops, its gambling haunts, or its dens of in-

[1] In using the words "people" and "state," here and in similar connections, we of course include the parts of them within cities.

[2] If a city may, at pleasure, have larger powers as against the state, why may not the ward, at pleasure, have them as against the city?

famy, apparently, the state should grant it. But suppose they are closed under state laws, and such a vote, the expression of the most degraded city majority, asks authority to open them and make them free to all, who will say that such a vote is a good reason for granting larger power for so vile a Home Rule? Who can maintain a right to Home Rule authority for making things worse? The state has a duty to aid the most moral and patriotic of its citizens in their best endeavors. But it has, morally, no right to confer legal authority upon the citizens of its most degraded sections or cities, though they be in majority, to do worse things than the vote of the whole people of the state would tolerate. Civilization would speedily decay under a state government which allowed the depraved and partisan, merely because in majority in a city, to govern it corruptly and despotically. If the gamblers and the thieves shall gain the majority in a town or a city, will it be the duty of the state to repeal the laws against their crimes, or to allow those who violate them to go unpunished?[1]

It is significant of the thoughtless facility with which false and dangerous theories of Home Rule have lately found acceptance that the vital distinction here pointed out — the duty of the state to confer local power for improving and not for degrading local government — has not been noticed, and that unscrupulous party majorities in great cities, shouting for larger Home Rule for degrading and partisan ends, have been, in substance, taught that they have a right to it, irrespective of consequences, merely because such a majority demands it.

Some readers may regard these elementary statements as being such mere truisms as might have been omitted. We are sorry to be compelled to think otherwise, and to find evi-

[1] Where the moral and religious tone of the people of the state, as a whole, is higher than that of some of its cities, so that for example the Sunday closing of the saloons cannot be enforced within them, the difficulty must be met by the most effective provisions practicable for good government. We cannot enter into details. But surely unlimited liquor sales all day and night, or on Sunday, are not any more than gambling and prize-fighting and bawdy-house keeping to be allowed because the vilest city majority favors them.

dence of the vicious effects of the false theories they expose, — theories which have caused tens of thousands of city voters to think they have been wronged in not being allowed to have their own way in wrongdoing in city affairs. These theories have supplied partisan demagogues with specious and vicious arguments. And, besides, if we concede that the part of the state called a city has a right to have as many grog-shops, lottery offices, and gambling-haunts as its majority desires, why must we not allow that part of a city called a ward, or a district, the same privilege, whenever its majority demands it?

3. The doctrine of Home Rule, as often presented, is not only one tending to disintegration, insubordination, and anarchy, but is one which enfeebles the state and degrades it in the estimate of the people, in the same degree that it stimulates selfishness, arrogance, and partisan domination on the part of cities. When several states made war on the Union in the name of false theories as to the right of Home Rule, a mayor of New York, Fernando Wood, rightly interpreted their example when he proclaimed the right of the city of New York "to be a free city." Some of the champions of unrestrained Home Rule for cities seem to go quite as far as that notorious mayor, when they declare that "our large cities must stand in the same relation to the national government that states do," and that it is necessary that "our large cities should be free cities."[1] We must think that the cause of municipal reform will be brought into peril if such views shall find large acceptance. The policy of making the city of New York a free city found support in several Bills in the New York legislature of 1897. Imagine the helpless condition of the state of New York with thirty-six free cities, or the national government degraded to feebleness and contempt, among the great powers of the world, by the rival claims of hundreds of such cities![2]

[1] See *Annals Am. Acad. Pol. and Soc. Sci.*, May, 1893, p. 95.

[2] In the states of Missouri, California, and Washington, cities of a certain size seem to be allowed considerable powers as to framing their own charters, subject to limited provisions as to approval by the state. (*Pol. Sci. Quarterly*, March,

The excessive claims of power for cities, when not so radical, are expressed in various forms. Sometimes it is said, generally, that they have a right to make their own charters; sometimes that they may refuse to accept any part of a charter they do not like; sometimes, that no city charter can be amended by a special law, or without the consent of the city. None of these theories are tenable; though the duty of the legislature to understand and properly respect the interests and conveniences of cities is indisputable and fundamental. They ought, as we shall more largely insist, to enact wise, general statutes, and to avoid to the utmost the passage of special city laws; but whether the state or the cities themselves are most responsible for failure in these particulars is quite another question, which we shall soon consider.

4. The facts that cities, and many municipal reformers, usually demand larger powers of Home Rule in the name of a false claim of "right of cities to govern themselves," and that the enactment of laws for their government is generally declared to be "state interference," illustrates the blinding and distorting effects of false and largely accepted theories on the subject. It is exceedingly desirable that more just views of the matter should prevail. Government is the aggregate and supreme authority by which the public affairs of a people are controlled. In the United States, it everywhere involves, (1) the national constitution, laws, and officers; (2) the state constitution, laws, and officers; and (3) municipal charters, ordinances, and officers; of which the latter, highly important as they are, are by no means the most important.

Most of our municipal literature, before the recent volumes by Dr. Shaw and Professor Goodnow were published, seems as if written in the special interest of cities, and it is rare to find in it any impartial presentation of the true relations,

1895, p. 3; *Annals Am. Acad.*, etc., May, 1895, p. 38.) If New York City and Philadelphia, one being Republican and the other Democratic, were allowed respectively such powers as they should demand, we think a new era would be opened in both municipal and party despotism and corruption.

rights, and duties as between the cities and the states, or any clear view of the extent to which the nation, the state, and city, respectively, directly govern within the limits of the latter.

The extent of governing carried on by cities is greatly exaggerated. The part of governing, at the city of New York, for example, which is carried on by the nation requires more than six thousand Federal civil officials. The national part of its government extends to the most important matters. It regulates commerce and protects those who engage in it; it preserves the inviolability of contracts; it defends the city against foreign foes and domestic insurrection; it is supreme over peace and war; it guarantees not only freedom of speech and religious opinions, but the republican form of government; it delivers the mails, controls banks, maintains courts, provides and regulates the currency.

Subject to national authority, the state is supreme throughout its borders, over all private rights and duties. It makes laws for the protection of property, person, and character; it defines crimes and inflicts punishments; it regulates elections and creates and controls courts; it has authority over lands, franchises, and all personal and domestic relations; its laws govern all partnerships and associations, as well as all corporations, of which municipal corporations are but a single class; it enforces all contracts and business obligations; it guarantees justice and insures freedom of religion, of debate, and of the press. Home Rule can be allowed to control none of these greater things of life, and it can even regulate them only in the subordinate sphere of ordinance-making, — and that in no way save in conformity to law.

Home Rule authority must, in the nature of American governments, be everywhere below the sphere of the law as well as that of the constitutions. To call the exercise of this limited authority, highly important as it is, "the governing of a city," is quite unwarranted and an evidence of superficial thought and delusive conceptions. We do not mention these matters to belittle the importance of this ordinance-making authority, the exercise of which may profoundly

affect the morality, the health, and the prosperity of the people, but to bring to the test of fact and reason that arrogance and those unfounded and misleading claims which we fear may misdirect and delay municipal reform.

5. To deal wisely with the forces which affect municipal reform, we must comprehend their real nature and proportions. Cities should have much larger powers for Home Rule just as soon as they show a capacity for using it wisely, and an intention to do so. They should see, however, that by far the most important part of their government must always be carried on by the state. Failing to comprehend this truth, they are likely, in the future as has been the case in the past, to fall far short of their duty to send able and trustworthy men to represent them in the legislature, — are likely also to continue to blame the states for evils for which they are themselves largely, if not mainly, responsible.

The first practical step toward larger authority for Home Rule, so far as mere legislation is concerned, is the enactment of a general municipal law, — a municipal state code, — giving adequate powers for the government of cities and villages. It should give authority to make all needed ordinances and to carry on local administration under it.

Such a law can be enacted only by superior men in the legislature, — men who, rising above mere partisan politics, comprehend what is due to the whole people, as well to those residing in cities as those residing in the country. Whose special duty is it to send such men to the legislature, and whose special interest is it to frame and propose such a law, if it be not that of city residents who are dissatisfied with their condition? Will any one say that our cities have, generally, sent men to the legislature who have had superior competency for such a work — even men whom the cities themselves would trust to make their own charters? Would the men who claim the most absolute right of Home Rule, unless mere partisans and politicians, agree to accept such a charter for their city as its own members of the legislature would frame for it? If not, with what justice can cities blame the state more than they blame themselves by reason

of bad city laws? Why has no city officially asked some of its ablest and noblest men to frame, at its expense, a good charter for its government, and to urge its adoption before the legislature?[1]

Most well-informed persons will perhaps admit that the members of our legislatures from the great cities have not exhibited distinguished competency for framing good municipal laws. We can say that the general inferiority, despite numerous exceptions, of the members from the city of New York for such a duty has been notorious. Yet these members have been the representatives of the city majority, chosen in the exercise of as absolute a Home Rule freedom in elections as it is possible to confer. While these pages are being written (November, 1895), we have a striking example of what would be the practical consequences of such a freedom if made universal. While the disgraceful results of the partisan domination of Tammany — just disclosed — were fresh in the minds of the people of the city, a large majority of its voters, in substance, voted to reëstablish this domination.[2]

The soundness of the views we have expressed as to the prospect of improving city government through the action of the city party majority is illustrated by every great reform made within a generation in the city of New York. The police reform law of 1857, the admirable improvement in the health laws made in 1866, the excellent laws regulating registration and voting in New York City, the salutary police justice act of 1873, the civil service reform laws applicable to the city, and the ballot reform laws more recently enacted, were not one of them proposed, but were all resisted, or made inefficient, by a majority of the representatives of that city in the legislature.

[1] The city of St. Louis, whose municipal policy has been unusually enlightened, seems in substance to have done this in 1876, and thus secured a very good charter. A promising movement in the interest of improved local government in Indiana is now active under the leadership of Hon. W. D. Foulke of that state.

[2] Since the text was written this anticipated danger has been made a fact by the results of the Greater New York City election of November, 1897, in which Tammany triumphed.

So far, therefore, from being able to accept the doctrine that the majority in a city, irrespective of its character and purpose, has a right to govern it, or can safely be allowed to do so, we see that the welfare both of the city and of the state are likely to require the exercise of the powers of the latter in aid of good municipal government.

6. A true comprehension of the salutary limits of Home Rule involves two distinct conceptions: (1) What degree of independence in local affairs, of power over them, is intrinsically desirable on the part of cities and villages, provided they are competent to use it? (2) How much of this power may be wisely intrusted to any particular city at any given time? The proper rule on the first point may be clearly set forth in such a municipal code as is greatly needed. But as to the second, it is hardly possible to have more than a temporary standard.

7. Another view of the practical results of the theory we may adopt is important. If the state should, in substance, say to cities, "We will give you whatever power over your affairs your voting majority may demand," — this being in New York what the Tammany Democrats may ask for, and in Philadelphia what the Republicans may ask for, — new inducements to party bribery and despotism, and richer rewards for the victors in party contests, would be created by which the worst kind of party government would be perpetuated. Not merely the usual offices and spoils would be secured by a party triumph, but also larger powers for governing the city upon the mere demand of the victorious party.

If, on the other hand, the law and the state should say to every city and village, "The mere request of your majority will not insure you larger powers; it must appear that you seek to improve your local affairs, and are likely to do so by the use of these powers; and that your purpose is to take your administration out of partisan politics and to select your municipal servants for merit, irrespective of party opinions," who can doubt that such conditions imposed by the state would tend to the improvement of municipal government?

As the wisest friends of municipal reform regard it as an essential that party control and contention shall be suppressed to the utmost in municipal affairs, all concessions of larger powers for Home Rule should be made subject to conditions which will tend to such a suppression. If, for example, a city is to be allowed greater power over the police, the fire, the prison, or the excise administration, it should be provided that no party tests shall be applied to the appointments or removals of the officers or employees connected with them, that they shall not engage in partisan strife, and that no party assessment shall be received from them.

8. It is unfortunate that the specious reasons on which some friends of reform are basing their claim of right on the part of cities to govern themselves absolutely, are just those which all debased city parties and unscrupulous politicians can effectively use for their own purposes. They naturally claim more power for ruling whenever they are in control. They plausibly denounce the most patriotic efforts of the state for improving city affairs as an interference and a wrong, save when the same party rules both the state and the city.

A sound doctrine of Home Rule would, practically, say to the voters of a city, irrespective of their party affiliations, "If you desire larger powers of municipal control, make it appear that the non-partisan public opinion of the city demands, and intends to use, them for the benefit of the city, and not for the advantage of any party or faction. Such a doctrine would practically say to these voters that one of the first things to be done to secure larger powers is to convince the worthy men of all parties that it is their duty to unite their endeavors, irrespective of all mere party interest, for good municipal government; it would suggest to them that no city deserves to have, or is likely to secure, much larger powers, save through corruption, until its inhabitants shall have wisdom and patriotism enough to unite in such endeavors.[1]

[1] It would, perhaps, set the city friends of municipal reform to thinking whether a larger share of their efforts might not with advantage be devoted to causing

9. The extent to which the corruption of cities and their abuse of their powers have contributed to our bad municipal condition has never been adequately set forth. No adequate reform is possible save by coöperation between the representatives from both the city and the country in our legislatures. We must, therefore, think it unfortunate that so much of our municipal literature has been written in a spirit of partisanship for the city. By developing a false and mischievous conviction that there is an inherent antagonism between cities and other parts of the state, a feeling has been developed which may be very unfavorable to an early triumph of municipal reform. Such a theory directly tends to jealousies and hostilities between them. One writer, for example, tells us "there can no good come of a system which . . . makes New York and Brooklyn a part of New York state, . . . dependent upon the country members of the legislature," that the interests of all "our large cities are totally diverse from the interests of the remaining sections of the state in which they are placed," and "that it is necessary that our large cities should be free cities."[1] The distrust and fears in the minds of legislators from the country, which such views tend to develop, might well be regretted even if it were not necessary to secure their votes for any large measure of Home Rule. Will they vote to give larger powers to cities if they regard their interests as hostile to those of the rest of the state, and as likely to be used to establish

city residents to better comprehend their own duties and shortcomings, and to bringing these residents into coöperation — while less might be said about the shortcomings and incompetency of state legislatures — at least until cities shall cease to be the largest contributors to the most unworthy members of these bodies.

Much has been said as to the comparative morality and patriotism of the residents of the city and residents of the country. We need make no assumptions on this point, for we have to consider only the kind of men that each sends to the legislatures. Cities certainly have no lack of highly worthy and gifted men, but how many of them are sent to our legislatures? Who will claim that city-elected members are generally superior? Who will say that a city, not generally represented by members competent and disposed to frame the laws it needs, can very consistently complain of the laws by which it is governed? Should it not even be ashamed to do so? These suggestions will not be acceptable to city residents, — will even offend some persons who are active in their alleged interest, — but the subject is too serious to allow such important truths to be ignored.

[1] *Annals Am. Acad. P. and S. Science*, May, 1893, p. 95.

independent governments and to foster hostile municipal interests?

We must regard the theory that the true interests of cities and states are opposed as being not only false and indefensible, but as tending to hostility and disintegration. It seems too plain for argument that the business prosperity of the city and the country are mutually dependent, that whatever imperils the health or degrades the morals of one hardly less involves the safety and character of the other. If vice, corruption, or crime are tolerated in great cities — if the dens of the harlot, drunkard, and gambler are open along the street, — does it need argument to show that the state and the nation are in peril? The homes of the country will be in danger from every low sort of administration for which city Home Rule may be responsible, if conceded to a vile city majority. This is the answer to the theory that cities should be allowed to do as badly as their majority pleases, that the state is unreasonable in exacting conditions in aid of purity, morality, and efficiency when conceding larger municipal powers.

10. Another view of Home Rule should be noticed here. Greater municipal powers may be sought when the city and the state are dominated by the same party. In this event, they would but too surely be granted and be used for party advantage. If, on the other hand, the party dominating the city were not in control of the state, the larger powers desired, however reasonable, would very likely be refused. Both parts of this wrongdoing would be greatly diminished if city government were, as it should be, truly non-partisan.

Yet another great evil is possible. The residents of different cities, impelled by party spirit, and acting under false views of their interest and rights, may combine into a great municipal party to carry elections and to bribe and coerce legislatures, even in different states.[1] Three or four cities,

[1] Since the text was written, nearly three hundred city politicians have come on from Chicago to New York City in semi-military array, with Chicago's mayor at their head, to help Tammany carry the New York municipal election of 1897. They seem to have been the guests of Tammany, and the event is ominous in its suggestions.

in each of several states, will soon elect the majority of the members of their legislatures. No statesman, so long as existing city methods prevail, can look upon such a development without anxiety. In such possibilities, we find additional reasons for taking city government out of partisan politics in a way compatible with the dignity and duty of the state, and not especially advantageous to any party.

11. The plausible theory has been advanced that if cities and villages were intrusted with largely increased powers, they would be much more used in the public interest than their present powers have been. Indeed, the partisan, municipal literature referred to charges that, because the states have not conceded such powers, they have made themselves responsible for the prostitution for corrupt purposes of the authority which cities have in fact possessed.

Such a theory is certain to be very acceptable not only to every debased city party and its boss, but to all those who live by the trade of city politics. Besides, many better citizens, who seek an excuse for the bad government of their city which they have neglected, will naturally find it more agreeable to blame legislatures than to confess their own faults, or better discharge their own duties.

It has generally been thought to be a rule of wisdom and justice to give the charge of many things to those who have been faithful over a few things, and we agree with Ex-Mayor Low in thinking this rule should be accepted in city affairs.

It is not to be doubted that in rare and peculiar crises, like that in New York City in 1895, when public feeling is deeply stirred and a profound sense of peril makes adherents of opposite parties ready to coöperate in the public interest, larger powers for Home Rule would be patriotically used. Indeed, it may be admitted that, under favoring conditions, an increased responsibility may cause more prudence and awaken a higher sense of duty. Yet, let us not forget the fact that within the same year, when municipal interests were still seriously threatened in New York City, more than thirty thousand registered electors failed to vote, and that the authors of the old abuses triumphed in its local elections.

We must judge of the influence of great and absolute powers by the results of experience through a series of years. Let us glance at some examples. No greater legal powers can be conferred upon cities than they now have for choosing able, patriotic, and worthy men to represent them in the state legislatures? Why have not such men been generally chosen? The New York legislature, a few years ago, gave the mayor of New York absolute power and responsibility for appointing worthy police justices, and every conceivable appeal was made to him to do so. Why have scheming politicians and unscrupulous party leaders ignorant of the law been generally appointed by him? Acting, apparently, on the theory that an increase of powers would increase the sense of public duty, the legislature recently gave the mayor of New York City almost unlimited power over the appointment of heads of city departments, with the results that, prior to the non-partisan victory of 1895, he filled these offices with unscrupulous politicians, who prostituted their authority for the benefit of their party and faction. The power of cities over their public schools has generally been ample, especially in New York City, yet this power has been lamentably used for partisan and sectarian advantage.

The stupendous frauds, the flagrant abuses of judicial power, and the plundering of the city treasury, which took place in New York City about 1870, under the lead of the notorious Tweed and Barnard, and the wholesale bribery, subsequently, in the Board of Aldermen in connection with the sale of city franchises, were examples of the exercise of ample powers for Home Rule. Nevertheless, we think cities should be given larger powers, but under safeguards and conditions we shall soon explain.

12. The demand of an unrestrained power for cities not only exhibits a strange disregard of the admonitions of recent history, but condemns precautions against abuses of municipal authority which have long existed — the abandonment of which would constitute a revolution in the constitutional relation between states and municipalities. The constitution of New York will supply illustrations. It

declares[1] (1) that neither cities nor villages shall use their money or credit in the aid of any corporation, association, or individual; (2) that they shall not be allowed to incur any indebtedness except for city or village purposes, save in support of their poor; (3) that no city shall, save upon specified conditions, become indebted for any purpose in an amount exceeding ten per centum of the assessed value of its real estate subject to taxation; and (4) that the amount to be raised for city purposes, aside from interest and debts, in a city of over one hundred thousand inhabitants shall not in the aggregate in any year exceed two per centum of the assessed valuation of its real and personal property.

These restrictions rest on the theory that cities, under such officers as they freely select for themselves, cannot be trusted with unlimited powers as to matters of common prudence, justice, and honesty, even to keep clear of ruinous debts and gross extravagance. Do those who demand an absolute right of Home Rule for cities — who count on increasing official virtue by merely enlarging official power — propose to remove these restrictions? If they do not, is it not a duty to the people, who are misled by their unqualified and specious demands, to define their meaning and purpose?

V. *Need of State Inspection and of Reports from Cities*

The evils threatened from false theories concerning the relations between the state and the municipalities are so serious that we shall go a little beyond the strict limits of our subject in dealing with them.[2] The prevailing practice in the United States — a practice which city parties, politicians, and bosses favor, and by which they have prospered — has been to permit whatever authority is allowed to a municipality to be exercised arbitrarily, without adequate publicity, or a declared duty of making reports to the state. There should undoubtedly be certain limits and subjects — to be clearly

[1] New York Constitution, Art. VIII. Sec. 10.

[2] Professor Goodnow has largely considered this subject. *Mun. Prob.*, Chs. IV., V., and VI.

defined in a general law, or municipal code — within and as to which a municipality should be allowed to act, generally, in its discretion, and without a duty of making any report to the state. But we think it a grave error to assume that these limits and subjects should embrace all the matters as to which the city may act at all. Outside the sphere of this absolute authority, it should be allowed to take action mainly discretionary, yet in various particulars subject to the duty of making reports to the state. These subjects, and the conditions of city action upon them, should be clearly defined. The reports to the state should show conformity to such conditions and the practical effects of what the city has done under such qualified authority.[1]

Let us illustrate these different spheres of city action: (1) In the first sphere, among the subjects as to which absolute powers may be given, — though some exceptions must be made, — we may place the care of streets, parks, sewerage, city lighting, water supply, the fire extinguishment system, and many details connected with sanitary and police and school administration. But no city should be allowed to enforce a political or religious test for being in any part of its service, or to discriminate in favor of its own residents to the detriment of the rights of the other citizens of the state.

(2) Among the conditioned powers — as to the exercise of which the state should require reports — are those relating to the main parts of the health, police, excise, dock, and school administration, to the proceedings of the police and justice courts, to the action of prosecuting attorneys, and to all parts of the city government affected by the conditions and limita-

[1] When we come to consider foreign cities, which have much larger powers for home rule than American cities possess, we shall find that these powers are safe to give only by reason of such conditions and required reports. Professor Goodnow seems to refer to this first or absolute sphere when he speaks of the "failure of the legislature to delimit a sphere of municipal autonomy," but we do not see that he refers to the need of a second sphere of conditioned control *Mun. Home Rule*, pp. 108, 260. In his later work (*Mun. Prob.*, Chs. III., IV., and V.) he enters more largely into the subject, and justly regards the action of cities in various aspects as being in the capacity of agents of the state, and therefore as justly subject to the duty of making reports to the state.

tions which the state constitution or the laws impose upon its action. Its expenditures upon all important subjects should also be so far shown as to make comparisons of the cost of governing different cities and departments possible.

It may be added that, as the police, police justices, coroners, prosecuting attorneys, and sheriffs are not mere city officers, but represent state authority, there is a peculiar fitness in requiring annual reports to the state which shall show how this authority is being exercised. Many advantages would result from such reports from different parts of a state.[1]

1. Professor Commons, in the article cited in the last note, explains the recent tendency in the United States toward bringing municipal and other local administration under an appropriate responsibility to the state, and gives several interesting examples of the way in which it is being done. He says that a law of Iowa, enacted in 1880, creates a State Board of Health, with authority to make sanitary rules and regulations, which the mayors and aldermen of cities, acting as local boards of health, are required to enforce; and that in Indiana the State Board of Health, in case of epidemics, may take entire charge of local health administration.[2] He tells us that State Boards of Charities and Correction have been established in eighteen states "to overcome the indifference, ignorance, corruption, and brutality of local officers," — those of cities and villages among them, — and that great reforms of abuses have resulted from their establishment. Many of the evils which these boards have investigated and exposed would probably have been avoided if municipalities had been required to make adequate reports to the state. We may add that, in the state of New York, very salutary results — nowhere more striking than in cities — have sprung from the action of the State Boards of Charity established many years ago, and that the greatest obstructions in the

[1] Professor J. R. Commons has shown the need that the state should insist on the authority for local administration being more justly exercised. See *Annals of Am. Acad. Pol. Sci.*, May, 1895, p. 37.

[2] See as to same tendency, Goodnow's *Home Rule*, p. 268.

way of their usefulness have been the party majority in cities, and the incompetent and corrupt officials it has put into office.[1]

2. It is an instructive fact that these boards had their origin mainly in an uprising of public opinion by reason of the intolerable evils connected with poorhouses, asylums, jails, prisons, and other branches of local administration, in respect to which an unrestricted and unreported Home Rule management in cities and other localities had been as corrupt and cruel as it had been partisan and despotic. The main purpose in creating these boards has been not to limit the legitimate power of the local authorities, — nor did they do this, — but to provide for such supervision by the state, and for such publicity as to the use of Home Rule power as would compel its exercise in the public interest.

The judgment of the people of New York as to the effects of such state inspection, and of the salutary publicity it gives to the abuse of municipal discretion, is strikingly shown in the fact that in their amended constitution of 1894 the creation of a new State Board of Charities with greatly enlarged powers is provided for.[2] It is made its duty to visit and inspect all municipal and county institutions, save those made subject to inspection by other state officers. The constitution also provides not only for a state commission in lunacy, whose duty it is to inspect all institutions for the care of the insane, but for a state commission of prisons, whose duty it is to visit and inspect all institutions having custody of sane adults charged with or convicted of crime, or persons detained as witnesses or debtors. Full reports are to be made to the state concerning these matters. It is not easy to overestimate the significance of these provisions as bearing upon the theory of absolute, uninspected municipal Home Rule administration, which they both condemn and prevent as unsafe.

[1] These State Boards of Charity have for several years been in the habit of holding national conventions; and they have, through their non-partisan and enlightened activity, become a salutary power in aid of just and beneficent administration in cities and villages.

[2] Constitution, Art. VIII. Sec. 11.

3. More than this, the people of the state of New York have in other ways recently expressed their sense of the need and utility of state inspection of local administration. A law of New York, under which a corporation known as the State Charities Aid Association was organized a few years ago, authorizes its agents to enter and inspect public institutions under the charge of cities, towns, and counties, and to make reports concerning their condition. Its vigorous action in this regard has resulted in the removal or mitigation of many grave abuses which the municipal authorities had tolerated. In the same spirit, after it had been demonstrated in the state of New York that the management of institutions for the care of the insane under the control of the state was much better than that of such institutions under the control of cities or counties, it was required by law that the inmates of the latter institutions should be — and they have been — transferred to institutions under state care. It was not lack of Home Rule authority, but the abuse of it, which made these reforms essential. Do those who assert the right of every city to govern itself as it pleases seek the repeal of these legal and constitutional provisions — the reversal of this policy of publicity and state inspection?

4. State Civil Service Commissions must not be overlooked, for they are, so far as municipalities are concerned, little more than methods of putting effective restraints upon the abuse of Home Rule authority in the matters of appointments, removals, and political assessments. Every law providing for a state civil service system to be enforced in cities not only aims to suppress city party favoritism and to compel party majorities to regard the public interest, but is, in substance, a declaration that such majorities cannot be trusted to select policemen, firemen, clerks, or even city laborers, with paramount reference to the general welfare, though they have the most absolute liberty and duty to do so. No man, therefore, who insists on unrestrained Home Rule, or denies the right of the state to demand reports concerning city administration, such as these commissions make, can consistently support a civil service reform policy.

The disgraceful character of the municipal administration to which such state inspection has now been extended had long been notorious. Patronage-mongering and partisan favoritism and corruption — resulting in ignorant and unfaithful officers and employees, in violations of humanity, justice, and decency, in extravagant expenditures, and in the neglect of sanitary precautions essential to the public health — had been a part of the abuses of such administration.

5. An important fact should be here noticed. The constitutional and legal requirements we have referred to are not denials of power for legitimate Home Rule, nor do they question its salutary influence when honestly exercised in a non-partisan spirit. They are not restrictions of municipal power, but of liberty and opportunity to abuse it.

There have, beyond question, been very many cases in which state legislatures, mainly for party reasons, have improperly enacted laws for the regulation of city affairs — have needlessly intermeddled with their just liberty, and we shall propose safeguards against such wrongs. The states have failed to enact good municipal codes and have passed needless special city laws. Yet, in a large way, state intervention has been necessary. "The inhabitants of the cities, plundered without limit by their own legislative bodies, have been compelled to fly to the state for relief."[1]

6. Yet more significant of the tendency of public opinion as to the need of state inspection of local administration is the fact that three states, as Professor Commons tells us, "have provided an officer — the public examiner — whose duty is the direct supervision of certain local authorities, mainly those of counties." "The experiment . . . ," he declares, "shows decidedly good results." This examiner, he says, can enforce a correct and uniform method of bookkeeping, ascertain the character and financial standing of bondsmen, and he must visit offices once a year without notice and make a thorough examination of their books,

[1] James C. Carter, President Nat. Conf. for Good City Government, *Proceedings*, 1895, p. 302.

accounts,[1] papers, and securities. He makes reports to the governor.

Professor Commons states that in 1891 a law for such examinations was made applicable to the financial offices of the city of St. Paul, and that irregular methods prevailing therein, which the examiner exposed, have been corrected. The state examiner of South Dakota, where, as well as in North Dakota, the new method has been applied, shows that its effects have been salutary, and he thinks it should be extended to towns as well as to the cities and counties.[2]

7. Professor Goodnow says that, within very recent years, seven states — Massachusetts, Minnesota, Mississippi, North Dakota, South Dakota, Texas, and Wyoming — have passed laws requiring a central audit of the accounts of counties, and in some cases of municipal corporations, — an audit required, he says, by reason of our "becoming convinced . . . of bad results from 'our historic theory of local government.'"[3]

The examiners of these local accounts make annual reports to the governor. In these facts we may perhaps see the beginning of effective checks upon the abuses of local authority, which may in a few years, if wisely extended, become so salutary as to make it safe to very greatly enlarge municipal powers for Home Rule. The salutary results of these inspections and reports in Massachusetts and their exposure of abuses, as set forth by Mr. Witten, cannot fail to strongly impress the reader.[4]

This new and developing policy we shall soon find to be quite in harmony with that which has long prevailed in the most enlightened countries of Europe, whose cities have much larger powers for Home Rule than those of the United

[1] Mr. Conkling tells us that each of the cities in the state of New York has a different method of bookkeeping. Consequently no useful comparisons of expenditures are possible. *City Government*, p. 18.

[2] *Annals Am. Acad. Pol. Sci.*, May, 1895, pp. 46–48; Goodnow's *Mun. Home Rule*, pp. 269, 270. As further showing existing tendencies, we may say that the Fassett investigation committee of the legislature of New York prepared a bill, a few years ago, which provided for uniform methods of keeping accounts by cities and for the filing of summaries of them annually with the governor.

[3] *Home Rule*, pp. 269, 270.

[4] *Public Administration in Massachusetts*, Chap. XI.

States. Dr. Shaw has pointed out the great advantages which have resulted from this policy to municipal administration in England.[1]

8. Professor Goodnow shows that in the period just prior to 1834 — when we may say that English city government was perhaps as corrupt and inefficient as that in the United States has ever been — "the English local government system was similar to our present American system" in important particulars, which he names; and he adds these highly significant statements: (1) "that local offices were practically independent of all central administrative control;" (2) that "each locality, moved by its own selfish ends, administered the law in such a way that its own local interests alone were considered, and the interest of the state as a whole, and society in general, were almost completely disregarded. The remedy for these evils was found in a resumption by the central government of the powers which it had abdicated."[2] Here seems to be a solution of one of the great problems now before us. English cities are now required to make reports to the central governments in order to avoid a repetition of the evils from which her cities suffered when their governments were so much like the governments of American cities at the present time.[3]

9. It may be said that the existing municipal methods of England are too much centralized for our governmental system, and are the natural result of a monarchy or aristocracy which does not favor municipal liberty. The facts as to restriction are the very reverse. Before 1834, when the royal and aristocratic elements were much stronger in England than they are now, her cities had all the disastrous liberties of acting independently, foolishly, and corruptly which ours now possess. The present English condition is the result of very recent methods, which, as we have seen, several American states have been repeating — apparently

[1] *Mun. Gov. G. B.*, p. 68. [2] *Mun. Home Rule*, pp. 234, 235.

[3] Professor Goodnow says that England has never forgotten the lesson of that disastrous period, and she has, in many ways, continually since insisted on efficient state supervision of the exercise of municipal authority. *Mun. Home Rule*, pp. 234 to 248.

without knowing it. We wish to repeat that this central inspection and supervision have been enlarged in England in the very period in which the Home Rule authority of her cities and the general liberty and elective franchises of her people have been greatly increased, until that authority, as we shall soon see, now far exceeds such authority in American cities.[1]

It is impossible to read Professor Goodnow's instructive pages without astonishment that sensible men can think that more arbitrary power conferred on cities, to be exercised without state inspection or responsibility to make reports to the state, can be either wise or safe. He calls attention to the fact that we have so far apparently learned little from the instructive experience of foreign countries in the matter of municipal government,[2] — a fact all the more remarkable, we may add, in view of our readiness to copy European fashions, amusements, and manners, to import all the best breeds of European cattle, horses, hogs, and hens, to reproduce all valuable European methods in art and industry, to say nothing of our importation of European games, follies, and vices.[3]

Professor Goodnow calls attention to the fact that we have been "unmindful of the dangers of uncontrolled local management of general, and even of municipal, affairs . . . ," but he tells us that now "there is a tendency toward the correction of this evil." He says that we are becoming convinced that our "historic theory of local government is leading to bad results in the case of our local municipal corporations, . . . and

[1] See on these points an excellent paper, by Mr. Frank M. Loomis, read at Louisville Municipal Conference, etc., May, 1897.

[2] *Mun. Home Rule*, pp. 259, 260.

[3] Nothing was more remarkable — and perhaps we should say more discouraging — to thoughtful minds in connection with the patriotic uprising for better municipal government in New York City in 1894–95, than the fact that its public-spirited leaders made almost no use of — or even reference to — the invaluable lessons of municipal wisdom which the governmental system of European cities, and especially that of England, could have supplied. In dealing with the disgraceful condition of our police system hardly any effort was made to bring the admirable police system of England to the attention of the citizens of New York. These facts are not recalled in the way of reproach, but to show how superficially grave municipal problems have been treated in the United States.

that we are justified in expecting that this central administrative control over municipal corporations will be given much wider development."[1]

We regret to have to add that, in our view, one obstacle in the way of early realizing these expectations is the blinding zeal of many sincere and patriotic reformers for that absolute Home Rule for cities under autocratic mayors which would degrade the states and dangerously increase the influence of city parties, factions, and bosses.

10. Nevertheless, we must think that we are at the beginning of a larger and more salutary inspection by the state, not merely of municipal administration, but of local administration generally, — not an inspection which will withdraw any legitimate powers for Home Rule, but one which will secure their legitimate exercise, and thus make it safe to greatly enlarge them.

We are not unmindful of the unsatisfactory character of many of our legislatures, — a subject to be considered elsewhere, — but whatever shall improve our municipal governments will cause our cities to send better members to make laws for them. As to whether the agencies for carrying forward inspections should be state boards, analogous to State Boards of Charity, as Professor Commons has suggested, or they should be conducted under the supervision of a state municipal bureau with a single head, analogous to the bureaus which inspect banks, insurance companies, and prisons, there may be a difference of opinion. If the state may legitimately create such boards, or a single officer, to aid in checking evils which unfaithful city officials and corrupt city parties cause, it may certainly deal directly with municipal corporations themselves when they connive at, rather than suppress, these evils.

When the states by their superintendents and inspectors

[1] *Mun. Home Rule*, pp. 242, 243, 260, 268-272. In illustration of this tendency and expectation we may cite the work of Mr. Wilcox, just published, which sustains the views of Professor Goodnow, *Study City Government*, 113; and the fact that a New York law of 1898 gave the state engineer considerable control in regard to roads which the state is to aid, *Centralization, etc., in New York*, by Fairlie, p. 14.

investigate not only schools and prisons, but such semi-private organizations as savings banks, insurance companies, and private asylums, and especially when state officials regularly go about both inquiring into the diseases of cattle, the substitutes for butter, and the qualities of meats, cheese, and milk,[1]—and even supervise the hatching of fish spawn, the production of oysters, lobsters, and clams, — there obviously can be no objection, on the score of principle or importance, to provisions for some kind of systematic scrutiny of the accounts and doings of those vast municipal corporations which expend enormous sums of money, and select and control the police and sanitary officers upon which the state must rely for the execution of its laws and the protection of the public health and morals. What can be more natural and just than that the state should insist on knowing, and provide the means of knowing, whether such large governmental powers as are intrusted to municipal corporations are being prostituted for illegal and partisan purposes. The state of New York provides for examinations, through a state commission, of the books and accounts of its railroad corporations, and causes reports concerning them to be annually laid before the legislature.[2] Can there be any doubt that an analogous system of inspection and reporting extended to municipal corporations would be of great public advantage, both in restraining abuses and in making more intelligent legislation possible?

II. It seems to us that the most natural and effective agency for the inspections and reports suggested would be a non-partisan Bureau of Municipal Affairs in some executive department of the states.[3] The information which the annual reports of cities would give to the bureau as to the cost, character, and efficiency of their governments would be of great value for preventing and exposing abuses. It would involve but small expense, and would supply authentic and invaluable facts for intelligent legislation.

[1] New York Legislative Manual, 1897, pp. 365, 367, 371.

[2] New York State Manual, 1897, p. 380.

[3] Such a bureau has been proposed by a New York state commission. See Fairlie on Cent. Administration of New York, p. 130.

The functions of the bureau should be neither administrative nor legislative, but educational and supervisory, with an authority for inspection and a duty analogous to those of a bank or prison superintendent, or to an officer of the United States treasury or post-office department, to investigate and make public all false methods, frauds, and maladministration in cities according to the provisions of general laws or a state municipal code. New York is said to now have forty separate bureaus and commissions independent of each other for various kinds of inspection. They might be brought largely under one department with great apparent advantage.

Cities would continue to have the same powers they now have, or greater, — being deprived of nothing but the power to practise corruption or partisan favoritism in secrecy, and to do foolish and extravagant things without reporting them for public censure or for comparison with the better doings of other cities.

12. The proof of the utility of such inspection and reports is not confined to the experience of the few states to which we have referred; it has been demonstrated on a vast scale and through a long period in the more than three hundred cities of England. Dr. Shaw shows that the making of reports does not hamper the cities, but is an advantage to them.[1] Professor Goodnow sets forth their advantages in great and convincing detail. There has been no undue centralization, and no diminution of civic spirit; on the contrary, legislative interference with local control has been diminished, Home Rule authority has been enlarged, and municipal administration has been vastly improved.[2]

Mr. Fairlie has shown the great advantages which have resulted in the state of New York from the more thorough inspection by the state of the local schools.[3] Who can doubt if such provisions for state and national inspection and reports as now exist were abolished that our state banks and insurance companies, as well as our national custom-houses

[1] *Mun. Gov. G. B.*, p. 68.
[2] *Mun. Prob.*, Chap. VI., and see pp. 111, 143, 144.
[3] *Cent. Administration in New York*, Chap. II.

and post-offices, would soon be as fruitful of scandals and corruption as our city administrations now are? Under the plan proposed, experienced state officers, at all times ready to make investigations, would not only be the constant dread of municipal malefactors, but would be a far less expensive and a far more effective agency than our legislative committees are for exposing and arresting maladministration. These committees are generally composed of active party members, many of whom are too much biassed by party spirit and trammelled by party interests and coercions to act effectively for the general welfare. There should be, under a new system, provision for prompt investigations not merely on the request of local officers, — for they might connive at the concealment of abuses, — but, under carefully guarded conditions, on the request of private city residents.[1]

13. Another view of such a central bureau is worthy of notice. So long as American cities are without city councils which can be trusted to exercise much larger powers for Home Rule, it will be necessary that frequent appeals should be made to the state legislature, or to some state authority, for special interposition in municipal affairs. Hence springs the evil of our too numerous special city laws. The attempt to suppress this evil by constitutional prohibition has in the main failed in practice. It often happens that much of the inducement for seeking a special law is the illegitimate gain expected from its execution without inspection, and without the need of making a report to the state on the subject, or of conforming to any salutary bureau regulations. The large experience we have cited is uniform in showing that all city laws are better executed when the state requires reports to a central body concerning the manner and expense of their execution. A permanent state bureau is a far better body than a legislature, with its transitory, inexperienced membership, for dealing with the needs and duties of municipalities. More than this, it has been shown that the requirement of such reports as we propose would not only reduce the evil

[1] See as to investigations at the request of private citizens, Chap. VIII.

of excessive special legislation for cities, but would improve such as should be enacted by causing the drafts of laws to be more intelligently prepared.[1] Professor Goodnow, speaking of reports from English cities, says "the result has been to reduce legislative interference in local government to a minimum, to increase enormously the efficiency of local government." He says our American experience teaches us that "in order to do away with special legislation we must have some central control beside that of the legislature;" and he expresses the opinion — in which we concur — that the new policy of supervision and reports, which has worked so well wherever tried, would be followed by the same results if generally adopted in the United States.[2] A little reflection would lead us to anticipate such results. The members of a legislature — generally elected from party considerations — will only in rare cases have had much experience in city administration. Almost of necessity they must generally act hastily. The head of an administrative bureau for city affairs will be selected for his competency for dealing with them and will gain wisdom from long experience. There will be under him subordinates, who will soon become well informed as to such matters, and familiar with the practical results reached in different cities. He will make annual reports to the governor, in which administration in cities will be explained and compared. There seems to be no reason why he may not become an officer as useful and as much respected as the comptroller of the currency or the superintendent of the schools. Unless mere selfish and partisan interests shall disastrously dominate, the information which such a bureau would collect and supply to the legislature and governor would exert an enlightening influence upon municipal legislation and all city affairs.

These suggestions of reports from cities have not been made without a painful sense of the unfitness of many members of American legislatures for dealing with cities, either in a non-partisan spirit or in the light of sound principles

[1] *Mun. Gov. G. B.*, p. 68.
[2] *Mun. Prob.*, pp. 80, 143, 144.

and the world's best experience. Nor have they been submitted with much confidence that such reports will be required until considerable modifications shall take place in some of the theories of municipal government which now find a large, but we think a decreasing, acceptance among the people. Nevertheless, it has not seemed too soon to consider methods and ideals which seem to deserve the serious consideration of all friends of municipal reform, and without the acceptance of which we must think really good municipal government is impossible.

CHAPTER III. — THE RELATION OF POLITICAL PARTIES TO HOME RULE AND MUNICIPAL ADMINISTRATION

Relative responsibility of persons and parties for municipal evils. Our early municipal methods borrowed from England, and their nature. How we have neglected city affairs and allowed parties to usurp their control. Need of a sound theory as to parties. Why parties will not reform city abuses. How far parties can properly exist in city affairs. Our constitutional system and our city-party system compared. City-party methods and interests opposed to our constitutional system. Parties defeat true Home Rule. Why parties not desirable in city affairs. Relation of our constitutions to municipal government and true Home Rule. Nation and state affairs and not city affairs the sphere of parties. Moral tone of city parties lower than that of state parties. City parties most corrupt and despotic, and why. City government mainly involves business and administration, and not principles fit for parties to contend over. Parties rarely contend about any principle arising from city affairs. Party opinions no fit test for holding city offices. Party issues irrelevant in city administration. Why party government in cities is vicious. The bad and the good voters in city parties. The theories of city-party managers. Duty of the worthy voters of all parties to stand together in city affairs. Duty of choosing best men for city office, regardless of party. Benefits which will result from having non-partisan city officers.

PERSONAL self-seeking, fraud, and corruption on the part of individuals, and their neglect of the duties of good citizenship, are certainly among the chief causes of our municipal degradation. Yet most of it is so intimately connected with party methods and party managers as to strongly suggest causal relations between them, and to make the truth on the subject very interesting and important.

Political parties and factions, and the spirit and methods they develop, are certainly among the most potential forces in our municipal life. If they are not among the chief causes of our bad municipal condition, what is their relation to it? Is it desirable to increase, or would it be better to diminish, party power and party spirit in city affairs? Are political parties so far essential agencies for carrying on municipal government that, in our efforts for its improvement, we should count on them as potential and continuing forces? What legitimate function, if any, has a political party in

connection with such government? Should party opinions be treated as tests for holding municipal office? If it were possible to suppress parties altogether, or to a large extent, in municipal affairs, would it be wise to do so? Is such suppression possible, and, if so, by what means? These are fundamental questions, obviously of vital importance, which we shall attempt to answer.

It should be kept in mind that the parties here referred to are national and state parties and their issues — primarily the former — though we shall find that there may be a legitimate city-party issue over a question of municipal policy, rarely as it is likely to arise.

No adequate answer can be made to these questions save on the basis (1) of sound views concerning the nature, functions, and tendencies of political parties, and (2) of a comprehensive conception both of our constitutional system and of a sound municipal system.

1. The science of municipal government is yet to be created in this country. Needing, as it does, the most careful study of our thinkers and statesmen, it is only beginning to arrest their serious attention. We have neither a municipal science of our own, nor any comprehensive work on the subject. We have not had even an exposition of the municipal system of the leading nations, until the publication, during the present year (1895), of the two instructive volumes of Dr. Albert Shaw.[1]

2. We have seen that when our original constitutional systems state and national were created there were no large

[1] *Municipal Government in Great Britain*, and *Municipal Government in Continental Europe*. These are works of great value, and every friend of good government in the United States should feel indebted to their author. These volumes, and those of Professor Goodnow and Professor Commons, cited in the last chapter, may be said to have laid some of the foundations of municipal science in the United States. There are many local organizations, already combined into a National Conference for Good City Government — from which a powerful and salutary influence is now going forth which promises much for the future. But the Conference has hardly entered upon the solution of the most difficult problem — that of the proper construction of municipal governments. The City Club of New York City and similar organizations in many cities have done much useful work in aid of the solution of municipal problems.

cities in the United States, and there was little conception of the serious questions which the governments of such cities would develop. The wisdom of our early statesmen was never given to such subjects.[1] In the main, our early state constitutions allowed old English municipal charters and most city affairs to remain undisturbed. We may feel the more confidence in our ability to remove the evils in our municipal governments because they are more the results of our neglect than of the incompetency of our statesmanship. We have failed in no comprehensive attempt at municipal reform, for we have made none, though we have made many spasmodic efforts based on inadequate investigations and false theories.

It is well known how our party system, through usurpation, aided by false theories, first became despotic in New York and Pennsylvania, and afterwards in the national administration, developing a spoils system under President Jackson which became more and more despotic and corrupt, until effective restraints were imposed upon it by the civil service examinations established under the national civil service reform law of 1883. We have seen that nothing was more natural, when large cities arose, than that parties should grasp the control of their affairs and rule them according to party theories.[2] The question whether party government was suitable for cities probably rarely occurred in those times, even to statesmen, and it was not considered at all by the people at large. It is, in fact, a question of this generation, — not even largely considered until within this decade. The most diverse theories seem to have been accepted by the same local communities. St. Paul and Minneapolis, for example, with homogeneous populations side by side in the same state, have city governments fundamentally unlike.[3]

[1] The original charter of Boston and the first English charter of New York City, for example, were modelled closely upon contemporaneous English charters. *Mun. Prob.*, p. 1. See Introductory Chapter.

[2] See Introductory Chapter.

[3] *Nat. Conf. for Good City Govt.*, 1895, p. 105. Mr. Conkling says that each of the thirty-two cities in the state of New York (1895) has a charter unlike that of each of the others, and that every one of them has a different method of book-

Many people will tell us that theories about city government may be well enough for philosophers, but are useless for all practical purposes. With little respect for the higher public opinion they and the whole class of politicians declare that one or another of the great national parties now potential in our cities will continue to be so, unless some new party shall be victorious in a national election, when it will succeed to municipal domination. Men of this stamp can hardly comprehend the nature of municipal government; they do not understand the power of public opinion; they can never have an important part in municipal or any other great reform. They seem to have no conception of the immense influence of mere conventional theories, — thories often which have no basis in sound reasoning and are sure to fall before the first well-directed assault.

Some new party may possibly need to be formed and to prevail before a great municipal reform can be achieved, but it is of immense importance whether it be formed on the theory of perpetuating party government in cities, or for the purpose of suppressing it. Though it should be conceded that the next decisive effort required for better municipal government must be made with the aid of some party, yet these questions will remain of fundamental importance: For what purpose should that effort be made? Should it be for the exclusion of national and state parties from municipal affairs, or should it be for making their domination continuous and absolute? The answer must obviously depend on the theory we have previously adopted as to the utility of parties in city affairs.[1]

keeping. Conkling's *City Govt.*, 18. The governor of the state of New York, in 1895, appointed two state commissions for framing city charters, and two schemes fundamentally unlike were the result.

[1] During the last few years, there have been movements of rapidly increasing power in the city of New York — supported by the City Club, the Good Government Clubs, the Chamber of Commerce, and other bodies — for non-partisan government in the city. The sentiment in the city which favored it made the election of Mayor Strong possible in 1894, and gave more than 75,000 votes to Mr. Low for mayor in 1897. This sentiment has been slowly developed. The author read a paper — perhaps among the first of its kind — in May, 1873, before the American Social Science Association, — which was published in its proceedings, — in which he

3. Though the aid of a party may be needed for the improvement of municipal government, it by no means follows that any new party is essential for the purpose. An existing party of the old sort, either through fear or hope, may be induced to support non-partisan principles on the subject, — even principles which it dislikes. No party will voluntarily surrender patronage, yet any party will do so to gain a victory or avoid a defeat. Therefore, if a considerable number of intelligent and patriotic men of either of the great parties shall accept the theory which condemns party government for municipalities, and shall stand resolutely and independently together for their convictions, the first time a contest of doubtful issues shall arise between the two great parties, these independent members may feel almost certain that one or both of these parties will accept a non-partisan municipal policy rather than take serious chances of a defeat by losing the votes of the independent members.

It has been mainly by such means that not only civil service reform, but ballot reform and corrupt practice reform, have been carried, both in England and in this country, both in Congress and in state legislatures, without creating any new party, but by the union of patriotic and disinterested men in both parties.[1]

This method of uniting the most unselfish and patriotic citizens, — of using the highest public opinion combined from all parties, — to compel parties in power to act in the public interest, despite the hostility of their majority, may be made a salutary and potential force for good municipal government in the future. Faithful to their convictions, a minority standing for a righteous cause and supported by a high sense of duty, may defeat the numerical majority. Nor is it in the sphere of politics alone, but in that of morals and reli-

presented, on the basis both of principle and experience, the need of excluding parties from the control of municipal affairs. Two years before he had published anonymously a little volume, *The Great City Problem*, in which similar views were presented.

[1] The doing of noble things through a union of the best men in different parties is not of recent origin. Magna Charta and the English Revolution of 1688 were thus achieved.

gion as well, that the minority having conscientious convictions, high intelligence, and sound principles on its side may become a greater power than the mere superiority of numbers. Governmental methods can be and should be so framed as to favor such results. The art of securing good laws through a noble minority, — by a high public opinion against a low party opinion, — is yet undeveloped and has vast possibilities in the future.

4. Now, whether the solution of the municipal problem is to be made by the aid of a new party, or largely through the coercion of the old ones, it is essential, in either case, to have at the outset a definite theory and policy as to the kind of city government we wish to establish, — whether it should be a partisan government or a non-partisan government, whether public opinion or party opinion should be relied upon as its dominating force.[1] We are far from intending to suggest that nothing effective can be done to improve our municipal affairs until a non-partisan theory of city government has been accepted, or public opinion has triumphed over party opinion. On the contrary, much good can be done even under our party system. Citizens may be persuaded to better discharge their municipal duties; unfaithful officers may be exposed to public indignation and brought before the courts; partisan bribery, extortion, and corruption may be brought to light and made more odious; the elections may be more carefully watched; patriotic clubs, composed of members of either sex, may make their salutary influence highly effective; instruction in sound principles of municipal government may be provided in public schools, in the

[1] By public opinion, as to city affairs, we mean that view of them which would prevail among the intelligent and reputable citizens if there was no overpowering or misleading party bias, interest, or passion by which they were controlled, — if they acted for the cities' welfare irrespective of national and state parties. If cities were truly independent governments, or if such parties should all dissolve, or cease to give attention to city affairs, it is obvious there would none the less be a definite public opinion among the people of cities by which they, and the city as well, would be governed. Party opinion is that opinion, as to city affairs, which regards the interest of such parties as paramount to mere city interests, an opinion often so strong and perverted as to cause adherents of different parties to conspire in resisting the true public opinion of a city.

higher institutions of learning, and in associations of patriotic citizens.

II

Let us now consider some of the reasons which seem to answer the questions, whether parties are desirable forces in municipal affairs, and whether party government can ever be tolerable in cities and villages.[1]

1. There is in the constitutional conception of cities and villages nothing incompatible with parties in reference to their affairs, provided these parties be such as arise out of and are limited to the principles and interests involved in municipal government itself. They should have a real liberty and purpose to act in paramount reference to the well-being of the municipality in which they are developed. Such municipal parties would be genuine; they would not be servile to state or national parties, or enforce their tests for office; members of different state or national parties could consistently belong to the same city party. The paramount aim of a true city party should be to gain a victory in city elections, not in aid of a national or state issue or party, but for some large principle or issue which occasionally arises out of city affairs and directly concerns their prosperity or good government. Such a party would resist all attempted dictation on the part of a state or national party.[2]

It is a fact of profound significance, in support of this

[1] The government of cities must be designated party government, (1) whenever it insists on national or state party tests for city offices; (2) when it holds that city interests may properly be subordinated to the interests of national or state parties; (3) when it relies on party opinion and interests and a continuous series of party contests, rather than on public opinion and a sense of duty to promote the municipal welfare, irrespective of state or national parties, as the paramount forces for its support.

[2] Two causes are pretty sure to prevent a continuous fidelity and usefulness on the part of real city parties; first, the seductive and overawing power of the larger parties of the nation and the states, and second, the lack of any continuous principles or interest about which true city-party divisions can be maintained, after a good municipal system has been once established. For city government is in very large part the doing of city work and the conducting of administration according to uniform methods. We can, therefore, hardly desire or expect continuous city parties.

theory, that hardly an example of a true city party can be found in our municipal history. Only the rarest instances can be cited in which a party issue in a city election has been over any principle of city government or any definite municipal interest, — over anything, in fact, higher than patronage and spoils, or hopes of benefiting some national or state party. We have had many city factions as the results of partisan conspiracies or of temporary ruptures of national and state parties. We have had many non-partisan and useful associations for suppressing a particular evil, — party despotism and corruption among them, — but hardly anywhere have there been city parties which, confining their sphere of action to city affairs, have proposed a series of party contests for their improvement.

2. The false theory which prevails as to the relations between parties and city government is largely due to erroneous conceptions of the relations between parties and city voters. Before the New York mayoralty election of 1894, it had been generally taken for granted that these voters were divided according to state-party lines, and that they would, in mayoralty elections, vote according to these divisions. The election of Mayor Strong of New York City in that year largely dispelled this illusion, — a great body of non-partisan voters from all parties in the city having stood independently together for his nomination and election, which they practically controlled. This independent, non-partisan sentiment had by 1897 grown so strong — and largely by reason of the demonstrated superiority of a non-partisan administration under him — that the independent vote was vastly greater than in 1894. Mr. Low, a Republican, whom it supported in 1897, received in the Greater New York more than 151,000 votes, — 10,000 to 20,000 doubtless cast by Democrats, — while Tracy, the regular Republican nominee, received only 100,000, and the Tammany candidate was elected by only a minority of all the voters. More than 77,000 of Mr. Low's votes were from the former city of New York.

These facts are not only interesting as showing the rapid

growth of a non-partisan, independent sentiment as to the city government, but as apparently showing that city voters are much less rigidly held in party lines than has been generally supposed. They may well lead us to ask what would be the natural and actual divisions — or classifications — of city voters, if they should be arranged according to their natural standing and division as to city affairs, rather than according to the arbitrary assumptions and selfish interests of party managers. We think the following might be an approximation to these natural divisions, — though they would vary greatly in different cities according to their enlightenment, — our estimate being made in reference to the most enlightened communities.

(1) Fifty per cent or more — the most intelligent — of city voters have come to believe that state and national parties would be more salutary and prosperous, and that cities would be much better governed, if they did not extend party divisions or party tests of opinion to city elections for city officers, but instead regarded these affairs in reference to city interests, irrespective of all mere party considerations. *This is the true, non-partisan, independent city vote.*

(2) Probably about fifty per cent of the city voters will vote in city elections with their party, adhering unhesitatingly to the party ranks, — regarding its issues as appropriate for city elections, and supporting its candidates largely because they are regularly nominated according to party methods; most of these voters really think it to be essential — so far as they have thought at all on the subject — to keep up party distinctions in city elections of city officers. *This is the honest party vote in cities.*

(3) Of this fifty per cent of voters, perhaps one-third are intense partisans, who instinctively believe in party contention, even in city affairs, as being a salutary activity, and most of them are too prejudiced to consider both sides of the question. They can see nothing but truth and patriotism on their own side, and nothing but selfish passion and error on the other side. *This is the partisan city vote.*

(4) Among the base voters of a city, there are many —

perhaps one in twenty of the whole — too selfish to support a party on the score of principle, and too venial and base to be independents, — who vote and act in city affairs only for selfish advantage. They are often bright men. *This is the mercenary city vote.*

(5) Below these four classes, at least in the social scale, there are many voters — three thousand to five thousand or more in each of our largest cities — who are supremely vile; they are utterly without qualifications for the franchise; they are regardless alike of duty, principles, or public interests; they care nothing for voting, save as it brings a corrupt gain to themselves; they are, in the main, the measure of our vicious and indefensible bestowal of the franchise; their votes and those of Class 4 are the prizes for which low party managers most contend in city elections; they are the voters who, under a good municipal system, would be denied the franchise. *This is the vile city vote.*

These vile voters would not go to the polls if they were not bribed to do so — and generally by city-party leaders and managers. If city voters were generally contemplated as being under such classifications, and not as all divided according to party convictions, perhaps more rational views might prevail as to the best way of dealing with them.

3. It is further significant that nearly all our great municipal reforms have originated outside the lines of party control, and that they have been carried, if not against party opposition, yet by coercing parties through the power of public opinion. Such have been the facts in regard to civil service reform, ballot reform, and corrupt practice reform. If state and national party organizations and contentions are legitimate in city affairs, and are salutary for preventing grave municipal evils, or for developing good municipal methods, why have we had, why have we now, no parties in cities for any such purposes?[1] Why, on the other hand, do

[1] The Citizens' Union of New York City, formed since these pages were written, was composed of adherents of all parties, and expressly excluded a purpose of favoring any party, confining its action to New York City affairs and leaving its members untrammelled in their party relations. All parties opposed it. Yet its

our parties, though potential in municipal affairs, make almost no issues in their platforms concerning these affairs, but instead habitually prostitute their power in cities to the purposes of state and national elections? The Tammany Democracy — the oldest and strongest city faction in the Union — has never initiated any large policy of municipal reform, and has habitually used its power for party ends. The Republican party in New York City has not generally done much better in these particulars. There seems to be no answer to these questions, no explanation of such facts, save this: that parties in cities and villages, from their very nature, have neither the capacity nor the inclination for removing abuses or for elevating the moral tone of municipal politics or administration.

Parties, taking as they do into their ranks the vilest voters, regardless of their character, can hardly be in a moral sense an elevating force in cities. Only the superior citizens can, by uniting their exertions regardless of party, become a potential force for uplifting city administration.

III

Let us now turn to what is fundamental in American constitutions as bearing upon the city-party problem. There are in the United States three separate spheres of government, — national, state, and municipal.[1] Though by no means independent of each other, yet each of these spheres requires

vote exceeded by a third that of the Republicans. The thoughtful friends of non-partisan city government have claimed that a mere municipal organization for its improvement should not be regarded as a party, nor should its members be treated as having been unfaithful to their parties by joining and working with it. This important claim has been, in the main, conceded by the last New York election law (*Laws N. Y.* 1898, Chap. 179), the law declaring that no organization or association for the election of city officers "shall be a political party within the meaning of the act," and that membership in such organizations shall not prevent their members enrolling themselves in a party. This is obviously an important step toward treating city government as non-partisan.

[1] Town governments under which the people act directly, and county governments whose functions are very limited, — save in a few states, — hardly require special notice.

under our constitutional system[1] separate laws, elections, officers, and courts, especially adapted to its own affairs.

It cannot be too emphatically declared that the necessity and justification for having our local administrations at all, whether they be those of states or those of cities, are that the laws, and the agencies for their execution, may be especially adapted to their local needs and interests and may most tend to promote them. Were there not such peculiar local needs and interests, there should be neither peculiar state or municipal laws, officers, or administrations, but all alike should be national. Nor is this all; it is an important part of the constitutional purpose in providing for those local jurisdictions, both state and municipal, that the officers whom the local voters are authorized to select should not only be their free choice, — free, especially, from central and party constraint, — but that these officers, after their election, should continue to be free to carry forward the local administration in the interest of the jurisdictions which they were selected to serve, — always, of course, subject to their duties to the paramount government over them.

It is therefore a part of our constitutional system itself — alike that for states and that for municipalities — that there shall not be a merely nominal Home Rule, but a real and appropriate Home Rule, within each of these separate jurisdictions. Hence for political parties to invade the freedom of this Home Rule — to enforce its party tests therein — is to make war upon our American, constitutional system and to commit treason against its spirit and purpose.[2] To do that which tends to uphold the constitutional counterpoise between

[1] In speaking here, as often elsewhere, of our constitutional system, reference is made to the constitutions of the states as well as to that of the nation.

[2] This is not the place for considering what officers are merely local. The subject is complicated and will be treated elsewhere. Many city officers discharge some functions which are merely local and others which are not — functions in the discharge of which they act as agents of the state. Professor Goodnow has set these matters in a clear light, so far as his plan called for their treatment. *Mun. Home Rule*, pp. 134–141, 224, 239, 240; *Mun. Prob.*, Chaps. III. and VIII. His subjects did not call for a consideration of the inherent tendency of political parties, or the incompatibility of their fundamental methods with city government on the theory of American constitutions.

the three separate spheres of government, — national, state, and municipal, — and to preserve that independence within each which our constitutions contemplate, are obviously a part of the duty of every party, as well as of every officer and citizen. No party can have any more right than a citizen to obstruct true local self-government, whether in a state or in a municipality. Parties are legitimate, both in the sphere of the nation and of the states, but a party of either class is guilty of rebellion and usurpation when it invades the constitutional freedom of the state or the city.

Nevertheless, parties systematically do this. They constantly obstruct true Home Rule in the state and the city, thus seeking their own selfish advantage by opposing the fundamental policy of our constitutional system. The facts are familiar that parties formed in the sphere of the nation have habitually and aggressively interfered with true Home Rule in the states by using their power and patronage to coerce state governments, to control the action of state officers, to bribe them with federal offices or the promise of them, to make state legislatures compliant to national party purposes, and thus impair true state independence. Hence those parties have in a large way practically repudiated their duties to state constitutions, and have become the most powerful forces for impairing the just freedom of state elections and legislation. National parties have also used their powers to coerce and bribe state parties, so far as these parties have had any distinct, independent policy. In these facts we find some of the causes of the unsatisfactory condition of our state legislatures.

4. Worse still, so far as municipalities are concerned, both national and state parties and their managers, conspiring together, constantly insist on their party tests and policy being accepted and enforced by the officers and party organizations of our cities and villages, in flagrant disregard of municipal interests and true Home Rule. These conspiring parties and their leaders do their utmost to compel municipal voters and candidates to accept their platforms, to conform to their demands, to contribute to their treasury, to elec-

tioneer for their candidates. They exert all their powers in rebellion against the decentralizing policy of American constitutions, and do their utmost to defeat the main purposes in providing for municipal self-government at all. A real liberty of making a free choice between various municipal policies and candidates, in paramount reference to municipal interests, rarely exists in an American city.

Thus party government in cities begins in party warfare on our constitutional system, and is carried on by usurpation, prostitution, and coercion. Yet so blinding is party spirit that vast numbers of active party men — worthy and patriotic as they generally are — support this usurpation and prostitution in apparent unconsciousness of their sources and disastrous effects, and without any apparent sense of their own guilty infidelity to the constitutional policy of their country.

5. All other forces which tend to defeat true Home Rule in cities are insignificant compared with that of parties and their managers. They say, in substance, to every city, "We are your feudal superiors, and you must conform to our demands. We acknowledge no duty to the policy of our constitutions. Despite their provisions, you who reside in cities and villages must conduct your local affairs in a way that will serve our party purposes. Your officers must be effective electioneers for us. They must accept our party tests; they must give us the patronage we demand; they must vote for our candidates; they must contribute to our treasury; there is no such right or liberty as that of a city to freely manage its own local affairs for its own benefit. Your city officers must give as much of their time as we demand for carrying our elections; we must be allowed to dictate all municipal legislation." In short, while our state constitutions, in substance, declare that cities should regulate their mere local affairs as their own local needs and interests require, our parties declare directly the contrary.

Parties, we repeat, are the most potential forces for bringing vile voters to the polls and controlling city elections; they habitually sacrifice municipal interests to party interests

as defined by their managers; they systematically treat cities as if they were a part of their feudal domain and were without any right to have their peculiar local interests protected.

6. National and state parties could far better discharge their legitimate and useful functions of supporting great principles and interests in the sphere of national and state governments, if they would not interfere with the true autonomy of municipal elections and administration. This autonomy relates to local matters not within the sphere of party functions and not legitimately the subjects of party contentions. If national and state parties could make no illegitimate gains by intermeddling with true municipal freedom, they would cease to do so; for no reasons of duty or patriotism would call for such interference. Their intermeddling with city affairs has been a fruitful source of party demoralization and corruption, and, if it were arrested, we may be sure that the moral tone both of parties and municipal administration would be speedily elevated.

The truth on these points is doubtless as unimaginable by professional politicians and patronage-mongers as it was unimaginable by them, a few years ago, that the selection of officials in the customs offices and post-offices in great cities could be controlled by competitive examinations, regardless of party leaders or party opinions. The methods of civil service reform have already taught valuable lessons concerning municipal reform. It has been made plain, in the civil service of the nation and in that of several states and cities, that when city officials are selected for merit, and are not left dangerously dependent upon official and partisan favoritism, they will speedily become independent voters, servile to no party, faction, or boss, but efficient in the service of the city. They no longer intermeddle with elections, and parties soon cease to care much for their political views. To reach this condition, through the methods of the civil service examinations, is naturally the first, as it is the easiest, of all practical methods for suppressing a large part of the evils of party government in cities and making such government impossible.

IV

The habit of subordinating municipal interests to national and state party interests has not only caused the importance of the former to be greatly underestimated and the sense of duty to promote them to be enfeebled, but has degraded the moral standards of politics and official life in cities. More than this, the individual sense of duty and responsibility to their city on the part of vast numbers of citizens has been so debased that they are hardly conscious of their own disgrace when they supinely tolerate a city government which they both distrust and despise. City authority, like everything else which has been prostituted, ceases to be respected. No city community which has for a long time allowed its criminal courts, its police force, its school system, and its whole municipal patronage to be used for the benefit of a despotic party and its managers can retain a high sense of duty to exert itself for good local government, or feel any fit measure of shame when such government is disgraceful. American municipal methods have long practically taught the lesson that a city has no interests that may not be both surrendered and prostituted for party advantage.

The greatest difficulty, therefore, in solving our municipal problems — far greater, perhaps, than most people imagine — does not consist in arresting flagrant abuses or in suppressing gross corruption. There is a grave need of correcting false and demoralizing theories of party, of comprehending our constitutional system and obligations, of supplying better constructive methods, which shall make mere city-party domination impossible; and above all of developing a higher ideal as to what municipal government can and should be, — methods and ideals without which, we must think, it will long remain unworthy of the people. In this sphere of effort, the pulpit, the press, the teachers, and all leaders of the moral forces of city life have a great duty to perform, — a duty in the discharge of which women may play an effective and noble part, — to make Americans ashamed of

having cities inferior in beauty, in cleanliness,[1] or in any form of good administration, to the most enlightened cities of Europe.

V

All experience has shown, on the one hand, that parties are useful and escape degradation in the degree that their issues involve great principles and that their truly representative elements prevail; and, on the other, that they tend to debasement and despotism in the degree that their contentions are about officers, patronage, spoils, and the mere details of administrations, — that is, in the degree that their autocratic and patronage-mongering powers prevail. Nowhere are elevating policies and great principles so largely involved, or are mere administrative details of so small relative importance, as in national affairs. The vast, diverse interest of great sections of the Union and of different states give dignity to national politics, and tend to dwarf the relative influence of mere patronage, organization, and management. National parties formed in reference to these large matters are constrained to fidelity by the noblest principles and the most dignified interests known to human government.

1. Next in the variety and dignity of the subjects involved in American party action are those which arise in the affairs of the states. Some of these subjects are intrinsically of very high importance, and involve issues and a sphere of action fit for salutary party contests. Yet, in the main, there are in states only inferior interests. They must act a subordinate part, for the nation has taken the great things to itself. It admits states to the Union; it declares war and peace; it protects states against invasion, it guarantees them a republican form of government; it regulates commerce; it establishes the fundamental principles of justice and liberty; it maintains courts largely paramount over those of the states.

[1] Since this was written, the dirty streets of New York City have been made clean — a result mainly due to Colonel George E. Waring, and made possible by the exclusion of party interference.

Besides, there is in state government, as compared with the national government, more patronage, more administration, more elections and voting, more mere business, and consequently larger opportunities for party bribery, coercion, patronage-mongering, and administrative corruption. The state charity and state school administration, the prison and jail administration, the lunatic, poor law, and police administration, and the vastness of municipal affairs, in the main unknown in the national government, are prolific sources of partisan patronage, prostitution, and vicious party contests in state politics.

2. It has been a natural result from such conditions that state parties — though many of their members have been faithful to state interests and duties — have generally been subservient to national parties. State parties have been less controlled by principle than national parties, have naturally accepted lower moral standards, have consequently become involved in more corruption, and have more basely surrendered to boss rule, than national parties, — of which they are largely mere satellites. State parties can only in a limited sense be said to have any distinctive principles to which they recognize a paramount allegiance. They are largely controlled by the commitments of their adherents to national parties, — by the hopes of offices and spoils which national parties dispense, and by the promptings of ambition and party spirit connected with national affairs.[1]

3. When we pass from the sphere of state action to the municipal sphere we make an immense descent, — a descent

[1] Such extravagance and other abuses as have attended the construction of public buildings by the states – for example the New York State House — have hardly been known under the general government. State bosses, the significant fact that there has never been a national boss, the disgraceful partisan intrigues and corruption sometimes connected with the election of United States senators, and the degradation of our municipal affairs — all these things, to a large extent, find a common explanation in the facts presented. National politics would need to be much more degraded before a national boss would be possible. The debasement and despotism of state parties have of late caused inferior men to be made United States senators. When we shall elect worthy members of the legislatures, they will elect worthy United States senators. Relief is not to be found in the election of such senators by the people, but in making members of legislatures more independent of party despotism.

from the domain of constitutions and laws to that of mere ordinances and regulations, from the jurisdiction which everywhere dominates to that which must everywhere conform and submit. Though municipalities may make ordinances which to a large extent affect conduct, duties, and rights, they must everywhere conform to the principles, limits, and purposes which the nation and the state have prescribed for them. Looking at the government of cities and villages, we can clearly see that there is no part of government in which so few great principles and interests are involved, none in which the management of mere business and administration are so large a part of everything to be done, none in which contests for offices, spoils, and patronage, and the expenditure of money, are so largely the subjects of all official action. Several of the nobler elements which tend to make parties useful, honest, and pure in broader spheres are wanting, while all the elements of party demoralization and corruption most abound, in cities. Party managers and bosses keep up a demoralizing activity about appointments, removals, the granting of favors, the management of primaries, in which the true interests of the people are disregarded.

It may be accepted as a rule that in whatever governmental sphere political authority is below the grade of the law-making power — is confined to the sphere of mere ordinance-making and administrative details — there cannot be enough of principle or large policy involved in the local issues to keep parties from sinking into corruption. That the control by a party of city administration degrades its moral tone below that of the people generally is made clear by the fact that a party will select for a boss to rule itself such a man as it would not venture, for fear of public opinion, to propose for mayor, — a fact as to which Tweed, Kelly, and the present boss of New York City — and similar bosses in Philadelphia, Chicago, and Cincinnati — are illustrative. For, surely, if city parties were not more unscrupulous than city people generally, they would tolerate no man for their own chief whom they would fear to nominate as chief of the whole city.

We should therefore naturally expect to find the moral tone of city parties as much lower than the moral tone of state parties as that of the latter is below the moral tone of national parties. And as the functions of party-elected city aldermen are the narrowest and lowest possessed by any legislative, party-elected officers, we should logically expect their action to be on a moral plane even below that of the members of state legislatures. Few people, perhaps, will deny that the results of experience have confirmed our deductions from sound principles. In such facts, therefore, we can see that it by no means follows that party government is appropriate in cities because it is legitimate and useful in national or state affairs.

VI

Experience has shown not merely that party rule has been more corrupt in cities than elsewhere, but that it has been more despotic, and more destructive of manly independence in the whole range of citizenship, from the laborer to the great merchant. We shall show that such results are the natural outcome from enforcing party methods and tests in cities. Government in the domain of the nation and the states is separated into three largely independent branches, — the judicial, the executive, and the legislative, — the officers of the last two branches being elected by different local constituencies and majorities. The executive and each house of Congress or of the legislature — in which the same party may not prevail — must concur in making every law and appropriation. These requirements put much salutary restraint upon despotic party action; in fact, often make real party rule impossible. Besides these constitutional checks, the diverse interests and jealousies of the various geographical sections and of different states and congressional districts add much to such restraints.

2. Each town and county represented in a state legislature has local interests and needs, for the protection of which, despite the coercive force of party discipline, its inhabitants are accustomed to act together in their corporate

capacity with some degree of independence. To a large extent they know each other, are in the habit of meeting to express their opinions and defend their local interests.

3. Turning next to cities, we do not find legislative officers representing different geographical interests, and organized constituencies analogous to those which exist under the national and state governments. Districts in cities for the election of the members of the city council and state legislature are not corporate organizations, and have no controlling geographical interests. The city election divisions are, in the main, made by mere arbitrary lines among blocks of houses and shops, enclosing persons generally strangers to each other, unaccustomed to act together, and without peculiar interests to be represented. The voters often reside in one district and do business in another. Under such conditions there can hardly be any salutary sense of responsibility on the part of the so-called representatives to the district which elected him, even if it has any peculiar interests to be represented. The lines of his district are generally drawn, if not gerrymandered, by the majority of the dominant city party or faction. This party is organized as a whole throughout the city; its concentrated, arbitrary power is ready to be instantly brought to bear upon every district which shall dare to assert any independence, and it is generally sufficient to crush all candidates who shall attempt to withstand any requirement of that pervading power. Hence we find that, in great cities, every representative may belong to the strongest party and faction, though two-fifths of the voters may belong to an opposing party.

4. This same omnipresent city party, which elects the mayor, — and through him controls all administration, — makes all appointments and removals. It dictates all appropriations, makes all ordinances, dominates all city policy. The party managers and leaders in every section of a city are disciplined together, and they readily act as a unit under common orders and a single boss. All city officials and employees — where civil sevice reform methods are not enforced — are adherents of the same party and faction. They are

under pledges to support it. Party spirit makes them intolerant toward their opponents, and the fear of removal makes them servile toward their superiors and silent concerning maladministration. This vicious party system, facilitated by the complexity of city affairs, leads to bribery, fraudulent naturalizations and registrations, cheating in elections, and all the manifold forms of despotism and malversation, for which great party-governed cities are notorious. Here is a party despotism quite impossible outside the city. It directly tends to boss rule and to the prostitution of municipal power for personal gain.

In such facts we may find the explanation of the ominous condition which has caused so many business men and corporations to basely pay money to bosses and party managers for their protection, rather than appeal to party-elected district attorneys and justices for the vindication of their rights.

The reader has very likely reached the conclusion that there is a grave need of making city government more independent of party control, and that consequently the theory, so generally accepted, that party divisions in city affairs are as appropriate as in national and state affairs, is quite indefensible. The same conclusion is suggested by the notorious facts that in most cases of malversation or corruption in American cities the offenders most responsible for it have been party managers — not always of the same party — who have conspired for common plunder — and have been most successful where party rule has been most absolute.

VII

1. It is not only true that questions of principle fit for party divisions seldom arise in our city affairs, but that *no party has ever grown out of such questions*, and that they have very rarely been controlling in any city election.[1]

[1] The important elections in the cities of New York and Brooklyn in 1894, in which the before dominant parties were defeated, were not mere party contests. More than twenty thousand voters of the ruling party in New York City, — and a similar proportion of the voters in Brooklyn, — rejecting the candidates of their

It is also true that most matters connected with city administration are of a kind which should be managed according to business principles and by officers and employees who are as free as possible from party bias. They should be independent of party dictation, for their party opinions are intrinsically immaterial.

We have seen that so-called city government, though exercising various governmental functions, consists in the main of work to be done and of administration to be carried on, which would be all the more successful if conducted according to uniform methods and quite irrespective of mere party interests and opinions. There is no Democratic way, no Republican way, and no need for considering political parties, for the well-doing of these things. So far as such government consists of making ordinances, of assessing taxes, and of collecting and expending moneys, — the most governmental of its functions, — it should certainly make no party discrimination. Municipal officers and employees, if persons of good character and ability, would be none the less useful if their political and religious opinions were unknown both to party managers and to every voter. To be faithful to the cause of good city government, irrespective of its effects upon any party, is to attain the true ideal of a municipal officer.

2. Save for the fact that vast numbers of very worthy and patriotic citizens, as well as all politicians and mere partisans, in the cities and villages of the Union, are exerting themselves for party victories and party advantage in city affairs, we should not have taken space for illustrating truths so nearly obvious. The great bulk of the work which a city has to do — to supply water and gas, to provide sewers, to make and clean streets, to erect and repair public buildings and works, to take care of parks — is so completely matters of mere business, skill, and taste, and is so foreign to all

respective parties, united in favor of a non-partisan reform policy, which triumphed. Since this note was written, the New York City election of 1897 has occurred, in which the Citizens' Union — a body composed of adherents of different parties — cast a much larger vote than the Republican party. See last chapter.

party issues, that it might be well done through mere private contractors, — probably more economically and much better done by them than through city officials selected according to party methods. Even city-party leaders and zealots can see that for city contractors to apply party tests for the selection of their employees would be equally absurd and disastrous.

No man of candor and sense will claim that particular opinions about national-party issues — for example, the tariff, the silver controversy, the Venezuela question, the annexation of the Sandwich Islands — are in the least a qualification for such work, or for being a city clerk, fireman, or policeman. Policemen, coroners, and police and civil justices, being under the highest legal and moral obligation to be absolutely impartial toward all citizens, are unfit for their places in the degree that they are affected by party spirit, are active party men, or have any wish to officially aid one party or faction rather than another. Yet, in many of the cities and villages of the Union, their city-party governments — and hordes of scheming partisans and criminals behind it — exert their powers to the utmost for forcing into these offices besotted politicians for party advantage — men whose presence there is a scandal to common justice, a reproach to political decency, and a dishonor to Republican government itself. It is not easy to say which is most disgraced by this practice, our parties or our municipalities.

3. There is no Republican way and no Democratic way, which is either honest or tolerable, of managing prisons, jails, asylums, or poorhouses; of keeping city accounts, governing a city police, or carrying a municipal school system into effect; but, instead, one non-partisan, sensible, honest method, irrespective of mere party considerations. The vast amount of time, manipulation, and corrupt intrigue devoted to the nomination, selection, coercion, and discharge of municipal officials and employees on party grounds or for party ends has been not only a needless waste, but a cause of demoralization and corruption which has degraded municipal government.

Our municipal degradation is perhaps not so much the result of false reasoning as of a passionate, impetuous party spirit, which is blind alike to all reasoning relating either as to causes or consequences. Not a few of our partisan zealots doubtless think party tests for municipal servants to be in the public interest. Yet many of them, blind to the facts before their own eyes, would read with surprise and condemnation those English laws of the last century which required all city officers to take an oath declaring their belief in the doctrines of the national church, and those still older laws of continental Europe which made it necessary for such officers to have the approval of a bishop. Yet we fear it may be a considerable time before all of these partisans will think it not less absurd and uncivilized to require such officers to accept a platform instead of a creed, and to get the approval of a party and a boss rather than of a church and a bishop.

VIII

4. Another view of party government in cities is too important to be omitted. Vast numbers of men are drawn into parties for reasons which are independent of moral or patriotic considerations, — many of them for reasons which are wholly selfish, if not corrupt. Mere inherited prepossessions, local influences, and peculiar mental traits are decisive with great numbers of voters. On the other hand, the most patriotic and worthy citizens are not generally very unequally divided between the great parties. City parties impose no tests of either character or intelligence for admission to their membership. They even compete against each other for the support of the vilest and must brutish knaves and criminals which they can bring to the polls. In cities, more than elsewhere, the greatest issues concerning government relate quite as much to moral as to political principles. They are issues as to which, aside from the dominating effects of party bias and hate, the best citizens would naturally be on one side, and the worst on the other. But party spirit and interests divide them. The gamblers, and the low grog-shop

keepers, the malefactors, corrupt politicians, and the whole criminal class are faithful to parties only in so far as parties favor their corrupt and lawless purposes — for which these vile voters are always ready to unite. On the other hand, the best class of city residents stand over against each other in hostile party lines, held there by party spirit, external party issues, and false theories of party obligations. Thus party government in cities enables the worst enemies of order and morality to combine, while it causes and commends a constant division among the natural friends of good government. If party opinions were ignored in city affairs, these natural friends would unite for municipal reform.

We have seen that the higher class of voters who would naturally stand resolutely together for good city government are too few, in any party, to succeed without the aid of their natural friends in the opposing party. Municipal reform can therefore be brought about when, and only when, this class of voters shall have patriotism, independence, and self-denial enough to unite for its achievement. The formation of such a union is therefore the first essential advance toward our municipal regeneration. Each good citizen must first subdue his own party spirit.

City partisans habitually act on these indefensible theories: (1) that it is only through party action, as we now have it, that good municipal government is possible; (2) that city interests must be subordinated to national and state party interests; (3) that it would be a breach of one's duty to one's party to diminish its city patronage; and (4) that no party man should support the best candidate for a city office unless he be an adherent of his own party. While such theories prevail the residents of a city do not deserve a good city government, and they are not likely to have it. Party government in a city is a demonstration that their inhabitants care more for the triumph of their parties than for the blessings of good city administrations.

Let us not blink the serious, humiliating facts. The great body of the best citizens who ought to stand together for municipal reform frown at each other from the ranks of

opposing parties and defeat each other's efforts for achieving it. Their party zeal is too great to allow them to see that if party distinctions were disregarded in city affairs, the relative strength of each party would not be changed; parties would have few effective motives left for meddling with city administration. The political opinions of municipal servants would be of hardly more consequence to parties than the party views of officers and soldiers of the regular army now are. A short period of true, non-partisan city administration would cause these servants to take no active part in city politics, as the experience of the best-governed cities of the world will show us.

5. The party opinions of city officers being intrinsically unimportant, it is false and demoralizing to make these opinions, and not their personal merits or the interests of the city, the controlling standards for their selection. If the appointing officer, or the voter, is not bound in honor and duty to select the fittest persons for serving the city, regardless of party opinions, but may betray the city's interest to aid his party, what municipal duty or interest may he not neglect, repudiate, and betray for party purposes? How can we expect any city servant to be faithful to his municipal duties, if his party requires him to betray them for its own advantage? If he may betray his village or city for party gain, why may he not do the same for personal gain? The very sense of civic duty is thus enfeebled and perverted by the party system.

6. The most intelligent men in a party, who for party reasons decline to coöperate with similar members of other parties to promote good city government, are most responsible for our bad municipal condition. They, above all others, know better. It is a shallow view, a specious excuse, for such citizens to denounce the ignorant and scheming politicians and the corrupt classes as being mainly responsible. How can really good citizens ready to unite, or already joined, in business partnerships or corporations, — perhaps members of the same club, co-trustees in the same society or church with party opponents, — justify themselves in refusing to coöper-

ate with them in the business and duty of improving city affairs?

If the familiar justification that party opponents cannot be trusted were true, each side saying this of the other, the obvious conclusion would be that no active party men should be given a city office. The facts are that blind, unpatriotic, half-civilized party intolerance is yet a potential force in the politics of many American cities. In despotic times men who dissented from the religion of the majority were not only excluded from office but were disfranchised and persecuted by the ruling parties. But now such parties, forced by public opinion and constitutional prohibitions to tolerate religious difference, can only exclude from office those who dissent from their creed in civil affairs. Men who would be ashamed to justify, even theoretically, the intolerance of their great-grandfathers in matters of religion now uphold without shame and with apparently no sense of its absurdity, an equal intolerance in matters of party politics. It is by no means easy to say which commits the graver offence, the intelligent, reputable citizen who, knowing better, violates his duty to his city in order to aid his party, or the gamblers and the low politicians who, under degrading influences, violate the same duty in order to benefit both themselves and their class.

We need not stop to consider the objection sure to be made by partisans and pessimists, that it is chimerical to expect that party men will ever be faithful to municipal interests as long as they think the city vote will materially affect national party majorities; for it has been explained, and will elsewhere be demonstrated, that under a sound municipal system neither party will either gain or lose any large advantage. Let personal character and capacity — to be shown by the civil service examinations, irrespective of political or religious opinions — be made the conditions of entering the municipal service, and the adherents of parties will be fairly represented there, working side by side. These men will not be party electioneers. They will neither pay party assessments nor be servile to party managers or bosses. It

may soon become the fact in the United States, as it is now the fact in the enlightened cities of Europe, that the politics of the municipal servants will be regarded as unimportant.

IX

There are doubtless many citizens who, while admitting that these objections to party government in cities are unanswerable, will, nevertheless, say that it will be in vain that we may attempt to arrest it. This is the view of men who lack moral courage and that high sense of civic duty which are the source and potency of all municipal reform. Many such persons welcome any specious excuse for neglecting sacrifice and labor for the suppression of city-party despotism. But their pretext has not even the merit of fact or probability. In the many offices — municipal, state, and national — where the methods of civil service reform have put superior persons into the public service, irrespective of party opinions, we have a demonstration of what may be surely done in every department of city affairs if we will only have faith, and resolutely strive for the general welfare instead of partisan advantage. So much has public enlightenment recently advanced, that many men who, a generation ago, would brazenly insist that all policemen, firemen, justices, and school officers — and a century ago, that all military and naval officers — should be of their own party, would now be ashamed to make such claims, save in the presence of mere politicians and partisans. Public opinion is rapidly becoming a power which is compelling intelligent men who seek social respect to act more in reference to the public welfare and less in reference to party gain. Only audacious politicians now insist that policemen, school-teachers, and justices should be appointed or removed for party reasons. There is no really better reason why a city clerk or laborer, than why a city school-teacher, street sweeper, or policeman should be selected by reason of his party opinions or services.

There is a grave misconception and underestimation with

many both as to the power of public opinion and as to the part it has played, and is likely to play, in the government of cities. They say that the contests of city parties over city affairs are the great sources of health and purity without which there would be stagnation, indifference, and decay. This whole theory is false. Public opinion is a constant, active, elevating, and potential force in municipal government far beyond anything which springs from mere party action.

The conscience and higher thought of the people, speaking through the press, public meetings, and innumerable non-partisan associations, make public opinion and that opinion is a force which no city party or faction dares to much offend. Even Tammany has not dared to disregard the new public opinion which requires clean streets. If Tammany and every faction and party in the city of New York should be dissolved, if all their bosses, managers, and leaders should be banished, this force of public opinion would at once become supreme in the city, and would fill the offices and carry on the administration according to its own high standards. Those who vote from a sense of duty and who labor to elevate city life, regardless of party politics, would go to the polls, but the vile and mercenary voters would not go there. The constant issue as to voting would be between those who vote patriotically on one side and those who vote selfishly or for party advantage on the other.

Public opinion constantly holds Tammany, and every city party, in restraint; it prevents it from doing what it wishes to do, and would do, but for the fear of this opinion. Tammany, and any ruling city party, prefers a man like Tweed or Kelly for its boss, to rule itself, and longs to make him mayor, but from fear of public opinion dares not do so.

Public opinion, in cities as everywhere else, favors the higher sentiments, better administration, and the noblest ideals of the people. It maintains a perpetual conflict with party opinion and interests. Weaken the power of public opinion but a little, and, we repeat, the administration of the city would sink to the level of her partisan politics.

Party activity, as to city affairs, relates mainly to naturali-

zations, registration, party enrolment, primary-district management, the bringing out of the party vote, the control of the election machinery, with but limited appeals to public duty or the higher intelligence. But the great and elevating subjects, as to which the people are not divided by party lines, in cities, have reference to moral, educational, humane, and altruistic affairs and standards of duty. Nowhere else are the great questions of charity, morality, philanthropy, and religion more nobly treated than in cities; but all of these things are far above the sphere of city politics. Nowhere else is there so much poverty and ignorance, so much degradation and vice, so frequent injustice, lawlessness, and crime, as in municipalities; and, happily, nowhere else is there so much self-sacrifice and generosity, such noble and abundant charities, hospitals, and asylums for dealing with them.

But concerning these matters, city parties have no part and recognize no duties. Schools and colleges for the education of the people, journals in which the higher public opinion is powerfully expressed, societies and associations innumerable which are effective for expounding and enforcing the moral and patriotic obligations of men, and churches in which the duties of religion, benevolence, and humanity are ably presented, — every one of them non-partisan forces, — are most abundant and effective in cities, but parties and their managers have very little to do with these things, and perhaps as often harm as help them. Through such agencies, self-sacrificing, altruistic, and patriotic devotion to the general welfare engages in stern, conscientious conflict and competition with all the lower forces of life in every city to an extent which is tenfold greater than everything of the kind which is illustrated in the contests of parties over city affairs. To call party action in cities the great saving force is manifestly absurd. Thus, in that very sphere of city government where there are the fewest elements for useful party action, and where the domination of party opinion is most to be regretted, the higher public opinion has its best expression and all noble minds have their grandest opportunities for salutary

contests and competitions. Yet, with an assumption of wisdom, we are told by city politicians that conflict and competition are the conditions of progress, and that the fittest survive; as if the maxim applied only, or mainly, to parties, rather than to the salutary conflicts of social, moral, and religious forces which develop the noblest men and women of the nation.

A glance at the activities of a great city, at the time of municipal elections, will illustrate the relative character of its partisan and non-partisan forces. In the garrets and cellars of crime and debauchery, the messengers of religion and humanity are as usual about their elevating work, but the agents of bosses and factions are there also, seeking the votes of the vile by means which yet more degrade them. The grog-shops are crowded with depraved men whose drinks are paid for by the money supplied by the partisan agents who have caused their fraudulent registration and their coming to the polls. While the children of the degraded emigrants are being instructed in the schools of some noble charities, the votes of these emigrants are the subject of a corrupt competition between the electioneering and bribing agents of rival parties and factions. The exertions of churches, noble societies, and citizens do much to advance the cause of temperance, but can we be sure that the electioneering solicitation and bribery of partisan managers, in aid of securing the vote of the liquor interest, do not counterbalance such noble efforts? At the prisons, poorhouses, and asylums where good men and women are doing the work of self-sacrifice and humanity may be also found on city election days the partisan henchmen and bullies who go there to bring the most depraved voters to the polls.

Whatever may be the reader's views on some of these subjects, this at least seems very clear: that cities will never lose their most salutary competitions, or their great and elevating forces, because city politicians have less inducements for their vicious activity, or because public opinion, rather than party opinion, shall become the dominating force in municipal affairs.

CHAPTER IV. — MUNICIPAL GOVERNMENT BY PARTY AS ILLUSTRATED BY THE TAMMANY DEMOCRACY

Reasons for discussing Tammany. Its origin and original character. Its transformation from charity to partisan politics. Its present character and its officers. It insists on party government, applies party tests for office, and enforces the spoils system. It holds city affairs to be a mass of politics and not of business. Insists that Tammany always promotes the public interests. Holds non-partisan city government to be chimerical. Whether its theories can be justified. The incompatible and demoralizing relations of Tammany. Its opposition to all reform. Its attempts to influence national and state government. It is impossible to defend the Tammany system. Its system worse than most of its supporters. We must appeal to facts to test the system. Tammany's position untenable and hostile to Home Rule. Vicious teaching and practices of Tammany. How it appeals to the worst voters and uses offices to bribe them. The Tammany system aggravates party greed and animosity. It facilitates conspiracy and degrades civic ideals. Power of appointment and removal used to bribe and coerce voters. Political assessments begin with Tammany; they increase its vicious power and degrade the municipal servants. Tammany sells offices for money. The sale of judicial offices especially vicious — debasing the bench, demoralizing the bar, and preventing the noblest lawyers becoming judges.

FROM the relation of parties to municipal government on the basis of principle, we turn to experience on the subject. A definite analysis and exposition of the theories and doings of a particular city party in a single city seems likely to be more interesting and useful than less definite statements concerning various parties and cities. For this purpose we select the Tammany Democracy of the city of New York, — which for brevity we may call Tammany, — because it is the oldest, the most highly organized, and the most characteristic and powerful partisan organization which has ever existed in an American city. As its theories and methods and their practical effects are those toward which the less developed city parties seem to be tending in American municipalities, their study is one of great interest and universal importance.

We desire it should be understood at the outset that we do not propose to sketch the history of Tammany, or to present its wrong-doings, as if they were unique or especially

reprehensible, but rather to show to what extent its practices have been the natural outcome of vicious theories and methods, and to enable the reader to decide how far the evils of Tammany rule have been the legitimate and necessary effects of party government in a great city.

We shall often have occasion to refer to the fact that the city party and faction [1] in New York City, which has generally opposed Tammany, has acted largely according to the theories and methods of Tammany itself, and we trust the fact will be apparent that we seek no advantage for either of these organizations over the other. We hope the reader will understand from the start that it is not our chief purpose to have him pass judgment upon the officers and administration which Tammany has supplied, but that he should decide whether its theories, methods, and system — whether party government in cities which they illustrate — will or will not inevitably lead to municipal degradation wherever applied. This is a foremost and fundamental municipal problem in the United States.

1. The present system of the Tammany Democracy — which has never been authorized by law — has been slowly and aggressively developed out of an obscure humane or charitable association, designated "The Society of Tammany, or the Columbian Order," — Tammany being the name of an Indian chief of fabulous virtues, who seems to have been selected as a sort of patron saint. The society appears to have been organized in 1789, mainly through the influence of a respectable artisan by the name of William Mooney. It was first incorporated in 1805, under a special law of New York, — the sole authority for its corporate existence, — which declares its object in these words: "For the purposes of affording relief to the indigent and distressed members of said association, their widows and orphans and others, who

[1] We need not nicely consider whether the Tammany Democracy is more fitly called a party rather than a faction. It certainly has some of the elements of both, and we shall refer to it under either name since it sometimes acts the part of one and sometimes that of the other. As it has no fixed principles to which it is faithful, it is not in the strict and best sense entitled to the honorable name of party.

may be found proper objects of their charity."[1] This purpose has never been changed by law, and the Tammany Society still exists under this statute, — so far as it is not an illegal organization, — the evolution under it from the purposes of charity to those of mere politics and municipal domination being but a part of that steady degeneration which has made the political action of the Tammany Democrats a synonym for partisan despotism and corruption the world over.

Prior to 1805, the society was composed of men of diverse political opinions, and it hardly took any part in politics — having been merely an honest, reputable, and modest society largely devoted to social intercourse and benevolent usefulness in a small way. After it had become political, and before it had become partisan, it had some eminent men among its members, and its history was identified with various patriotic public services. Yet its early doings, over which some of its adherents of the present day are in the habit of indulging in unwarranted and nauseating laudation, were too unimportant to be of interest now, save as showing how readily partisan leaders can make the methods of charity useful for party purposes.

In recent years the society has had for its legitimate ends little more than a perfunctory existence and a nearly useless activity. But it has erected a great building, which contains an ample hall — besides space for a theatre — which is the headquarters of the Tammany Democracy. This Democracy has dominated the municipal politics of New York by methods which the founders of Tammany and its eminent members of early days apparently never imagined.

The Tammany managers and chiefs are designated sachems, and one of them is called the Grand Sachem, who dispense such charity as survives. But their most active efforts are given to party management, to making nominations and controlling elections, to carrying on the trade of party politics, to patronage-mongering, to the control of city administration, to the barter and sale of offices, to persuading and

[1] New York Laws, 1805, Ch. 115. The title of the act gives the name of the organization to be formed as "The Society of Tammany, or Columbian Order."

coercing voters to support Tammany, to the manipulation of city primaries, to the securing of such laws as Tammany desires and defeating the bills it dislikes.

In the official, semi-savage nomenclature of the Tammany Society one of its principal officers is designated a Wiskinkie, another a Sagamore, another a Scribe, and its great hall is called a Wigwam. A more grotesque combination of incongruous elements — of charity and partisan politics, of Indian names and civilized designations, of feudal despotism and nominal democracy — than Tammany presents has perhaps never existed.[1]

2. Out of and around this original corporate body the Tammany Democracy has developed the ordinary representative organizations and machinery of party action, which undoubtedly are very good of their kind and highly effective for their purpose. We shall have no need for details on these points save as they will incidentally appear as we proceed.

Tammany insists on absolute party government in cities; it enforces its partisan tests in the selection of city officers and laborers, all of them, unless for peculiar reasons, being required to be its supporters; it expects all such persons to so use their power and activity that they may be beneficial to Tammany; it utterly repudiates the non-partisan principles and business methods through which every considerable reform has thus far been made in American cities. Its theories and methods are as essentially partisan as they are selfish and merciless. Its great reliance is on semi-military organization, party discipline and patronage, political assessments, adroit management, and despotic control under the supreme leadership of a boss. It regards municipal party contests as sources of municipal virtue; it insists on universal, proscriptive, and merciless party methods in municipal administration; it favors an endless series of partisan battles as the essential means of good municipal government for all cities

[1] *Tammany Hall*, pp. 20, 34, 38, 87. This unique and interesting pamphlet of about 150 pages, issued in 1893, — apparently by the Tammany organization itself, — will repay a perusal. It has a huge tiger on its title-page.

and villages. It holds that city government should be so managed by a party as to pay the expenses of this management and to reward those who have charge of it. It rejects the methods of civil service reform and ballot reform as false and abominable; it insists that all measures, nominations, and official changes should originate inside the party lines and be under the control of the party leaders.

Denying that municipal affairs are in the main a mass of work to be done, of business to be transacted, or of administration to be carried on, irrespective of the political or religious opinions of the municipal servants, Tammany largely treats them as a mass of politics to be managed, of patronage to be divided, of spoils to be shared, according to party theories and for party advantage.

It does not say that the city interests should be disregarded, but it assumes that the Tammany majority always represents these interests, and that the Tammany system is the best for their promotion. It claims that Tammany men alone should hold city office or be employed to do the city work. Tammany does not merely declare that there should be an endless and multitudinous series of partisan conflicts and elections in cities and villages, as fountains of public virtue, but further says that there should be short terms of office and many elected officers, in order to keep these sources of virtue perpetually active and prolific. It declares that the places in the municipal service should be the prizes of the victorious party or faction, to be distributed by their leaders among their obedient adherents in the main as rewards for votes and other party services; it holds that city and village officers and employees may be rightfully, and should be, selected and discharged for party advantage — at the discretion of party managers.

Tammany insists that all municipal servants shall not only work for the party, but that they should be ready to pay assessments to meet its expenses, and that failing in these duties they should be removed as these managers may see fit. In short, Tammany claims that the dominant municipal party may use its power, as it may think best, to perpetuate

its own supremacy, to fill its own treasury, to reward its own adherents, — always, however, within the restrictions imposed by law; for the Tammany system does not in theory justify either fraud or corruption, however much it may tend to produce them.

In the view of Tammany, non-partisan city government is chimerical, and the coöperation of the adherents of different parties for securing it is undesirable and impracticable, save as the result of a bargain between party managers.

3. According to the Tammany theory, the will of a city-party majority should be its own moral law, and the policy of that majority is certain to promote the general welfare. An independent or non-partisan in city affairs is an eccentric, impracticable, useless person, sure to obstruct good government, and a fit subject of dislike and suspicion. These are the most developed theories of all supporters of party government for great cities, and we shall find that it has required but little compromise of theory to enable Tammany partisans and many Republican partisans to habitually conspire and coöperate together for power and spoils in New York City.[1]

II

1. These important questions here present themselves: Does the Tammany system provide for fit relations between political parties and municipal governments? Should it be commended for general adoption? Or should it be condemned and excluded to the utmost? These questions are of practical importance in every city and village of the Union. In attempting to answer them, let us keep in mind the fact

[1] We are far from assuming that Tammany men are generally unpatriotic, or regardless of the general welfare. The vast majority of the adherents of Tammany unquestionably give its system an honest and patriotic support. But a large proportion of them are the victims of a party spirit so intense and perverting that they are unable to accept a sound view of municipal interests. Great numbers of them, who condemn many of the evils incident to their system, nevertheless support it because they think nothing better is possible. They have no conception of any kind of city government save party government. Below all these adherents are a large body of mercenary and vile voters which the Tammany system is most effective for bringing to the polls.

that the question is not whether the Tammany Democrats have been corrupt or intrinsically unworthy, but whether the Tammany *system* should be condemned and suppressed as false, demoralizing, and intolerable.

Some explanations are required for avoiding misconceptions and confusion of thought: (1) The fact that Tammany administration has been infamous is not a decisive reason why the Tammany system should be condemned, for the fault may be in its managers rather than in the system itself. (2) A large part of what we shall say of Tammany will be, in substance, applicable to the prevailing faction of the Republican party in New York City, the leaders of which are generally more or less in conspiracy with the Tammany leaders, and they have largely adopted Tammany methods. (3) The Tammany Democracy has these three distinct relations and spheres of action: first, it is, in a sense, the local organization of the national Democratic party in the city and county of New York; second, it is a local organization there of the Democratic party of the state of New York; third, it is also an organization in the city of New York for the purpose of controlling the party affairs and municipal government of the city in the interest of Tammany itself and its managers.

We are to deal with Tammany only in its latter, or municipal, relations, save as its other relations are incidentally involved. It is plain that if Tammany's connections with the national and state Democracy should be dissolved, its organization and methods for dealing with city affairs might still continue, however much its power would be weakened. It is very clear that these threefold relations, quite incompatible with each other, constantly tend to conflicts of interest and duty as well as to demoralization and corruption. But in this regard the relations of Tammany are not radically different from those of any party organization in a city which mingles municipal, state, and national issues, and supports or sacrifices such parts of them as will most promote its own advantage or that of its managers. These evils are incidents to party government in cities, where it has no fit place.

We shall soon find that Tammany habitually sacrifices, on

the one hand, city interests to those of the state and national parties; and, on the other, that it uses its influence with state and national parties to gain municipal power, patronage, and spoils for itself and its favorites. It is obvious that such conflicting relations are incompatible with any definite or avowed principles, save those of the spoils system, and it is notorious that Tammany has not generally been faithful to any other.

It is a natural result from the nature of the Tammany system — and not merely from the character of its managers — that Tammany opposes or supports national or state issues according to its own views of its own advantage. It has not, nor has any one of the conspiring Republican factions referred to, ever devised or proposed any policy of municipal reform. It has never carried a municipal election on the basis — or in the interest — of any definite municipal principles, save those of the spoils system or the boss system. It has never scrupled to resort to any policy which it has thought most likely to catch the most numerous voters; and, as a natural result, the better members of the Democratic party have habitually sought to excuse themselves from responsibility for such conduct. Having had a longer supremacy in the affairs of a great city than any other municipal organization in the United States, Tammany has never during this generation elected a first-class mayor for the city of New York, and but rarely a mayor of the second class.[1]

2. Tammany has opposed the best measures for police reform, sanitary reform, civil service reform, excise reform, ballot reform, and corrupt practice reform. The most notorious scandals and corruptions which have arisen out of municipal government in New York City have, in nearly every instance, exhibited leaders of Tammany and officers selected by it — Tweed, McCunn, Barnard, Cardoza, and the recently condemned police justices and police commissioners — as most intimately connected with these evils. Public opinion in the United States and the most candid and competent of

[1] Mayor Hewitt — far above the moral tone of Tammany — justly commanded a vote beyond its ranks.

foreign writers regard Tammany and its managers as mainly responsible for the degradation of the municipal government in New York City.[1]

What has made this Tammany party ominously significant are the facts that it is the first example of the evolution of mere municipal patronage, conspiracy, and spoils into a power great enough to almost dominate a state party in a presidential election, — it having become, before its defeat in 1894, a controlling influence for corruption at Albany and an appreciable force of the same kind at Washington. There was only needed a confederation of city factions organized on a Tammany basis in a few of our largest cities — a confederation which the acceptance of the extravagant Home Rule theories we have considered would soon produce — to constitute a municipal power for corrupt partisan domination potential enough to degrade, if not to control, both state and national politics.

3. Until quite recently, the Tammany system has hardly had defenders on the basis of principles, but it has now found an elaborate justification in a volume by a well-known writer who seems to present the system as the latest stage of a natural and inevitable municipal development. He does not attempt to prove the Tammany system to be compatible with our constitutional system, but presents it as the outcome of forces to which the latter must yield, as a new species of municipal government, — born of Tammany and quite sure to prevail, — which he designates "government by syndicate." This author, after referring approvingly to the Tammany system, and to the present boss of Tammany and his associates, declares that "the respectable public at large ought to be grateful for the perfection of that despotic system by which the whole body is controlled by a few leaders" — certainly an astounding declaration.[2]

[1] 2 Bryce's *American Commonwealth*, pp. 339–353.

[2] *Politics in a Democracy*, by Daniel Greenleaf Thompson, Chap. XII. pp. 34, 42, 63, 108, 121. We are told in substance by this writer that if we should overthrow this syndicate system, something similar or worse would come in its place. We must think he has overlooked a whole hemisphere of the subject, for there are forces of patriotic and altruistic sentiment, far above the moral tone of a

We cannot think it quite justifiable to assume that the foreshadowing of the ideal municipal system of the future is to be found in the vast city which is among those worst governed among the enlightened nations, rather than among those which are the best governed, for it is at least possible that civilization in the future may build upon the best theories rather than upon the most vicious which the world can supply.

4. Before considering those practical methods of Tammany upon which our final judgment concerning it must be based, reference to some facts will be useful. It has been generally assumed that the majority of the voters for Tammany have been peculiarly wicked, while little notice has been taken of the blinding and vicious effects of its system; and thus attention has been concentrated upon the evil results, while their constant causes have been overlooked and misconceived. Such an assumption gives plausibility to the theory that the many incompetent and bad men whom Tammany elects truly represent all its voters. We think that its system is much worse than the majority of its supporters,—at least much worse than they think it to be. If not, how are we to explain the facts that great numbers of worthy and patriotic men, perhaps a majority of adherents of Tammany, despite all the infamous disclosures made of late (1895), still defend it with passionate earnestness? How has it happened that a party system, identified with a scandalous history for more than a generation, has hardly called forth any philosophical inquiry, —save that just referred to — concerning its theories, methods, or inherent tendencies, — has hardly found any explanation of the depravity and corruption in the midst of which its power has increased, save in a mere fortuitous succession of wicked party managers and corrupt officers? Are there no deeper and constant causes for such anomalies? When it is notorious that many good citizens, who lament the municipal evils before them, adhere to Tammany notwithstanding its manifold corruptions and vicious methods,

Tammany syndicate, which must be taken into account in interpreting the municipal tendencies of our times.

we feel that among the gravest municipal problems to be solved are these: Why are such facts possible? What kind of a power is it that binds such men to the continuing support of such an organization? Why have their reason and sense of duty failed? We hope to offer some explanation as to these ominous facts.

III

Perhaps a majority of voters in all parties yet think that party divisions are desirable in city affairs and that party government for cities is not only the best practicable, but that it is inevitable. Something more than theoretical reasoning will be necessary to change these convictions. We must dissect city-party government and examine its parts. We must show the relations between theories and facts, — looking into the practical methods and mechanism of city-party managers. Tammany can supply excellent illustrations applicable to all city-party government.

1. We have considered its threefold and incompatible relations. These conflicting relations not only involve irreconcilable duties and interests, but strongly tend to prevent a just regard for municipal rights, and to make true constitutional Home Rule impossible. The need of at all times considering such threefold relations almost excludes the possibility of Tammany being truly faithful to any one of them, and directly leads to bargains, betrayals, and corruptions. If Home Rule and state intermeddling are incompatible, how can Tammany act in the interest of both the city and the state? City interests are unscrupulously sacrificed, and city patronage is freely used, to carry state and national elections for the advantage of Tammany, its boss and its leaders. In 1892, for example, they audaciously disclaimed even the pretence of treating the elections for the city on the basis of its interests, and declared in their official publication "that Tammany subordinated everything to the interest of the national ticket. There was practically no campaign made so far as the local ticket was concerned."[1] When such a

[1] Note *Tammany Hall*, pp. 100, 101.

theory of infidelity and betrayal has been accepted, it is folly to expect a city party will ever be faithful to municipal interests. Here we have the first false, corrupting lesson which Tammany teaches its adherents,—a lesson which is taught by every local party which, in governing a city, also acts on the behalf of a state and a national party.

2. The next lesson taught by the theory and methods of Tammany, in fact by all party government in municipalities, is hardly less demoralizing. From the fact that no party principles are involved in city administration, it results that the bonds of union among the adherents of city parties and the motives of their exertions are mainly the hopes of offices and the profits of controlling local affairs and of extorting bribes and assessments. Not only are the nature and functions of a party thus degraded in the eyes of the people, but they are taught to regard it as an agency for advancing the selfish interests of its adherents.

3. The managers of a city party know very well that, considered in reference to municipal interests, the political opinions of city policemen, justices, and other municipal officers and employees are utterly unimportant; yet these managers inculcate the false and demoralizing doctrine that such opinions are material to the general welfare, thus presenting parties and their leaders before the people as unscrupulous deceivers, acting under false pretences for personal or partisan advantage. In these facts we find some of the reasons why high-toned men are repelled from city offices and low politicians are able to grasp them.

City parties and their managers teach their adherents that party control of city affairs is a blessing, and an end in itself, for the attainment of which every municipal servant is bound to exert himself. They insist that no man should fill a municipal place merely because he is the most competent for it, but that he should be wholly excluded from it unless he belongs to the dominant party. The present boss of Tammany (1895) has proclaimed this theory in these words: "All the employees of the city government from the mayor to the porter who makes the fire in his office should be mem-

bers of the Tammany organization;" and Tammany in its official organ has repeated and promulgated this half-civilized party theory.[1]

Over against such claims, we declare these truths to be indisputable: (1) It is both the right and the interest of the city to have the best men in its service, irrespective of their political and religious opinions; (2) it is, in a moral sense, the right of the fittest citizens — regardless of such opinions — to enter this service; (3) that it is both the moral and legal duty of the appointing officers to choose such men.

4. The Tammany system, following the worst methods of the spoils system, makes the hope of winning offices an incentive to degrading partisan and official servility in municipal politics. It keeps out the worthiest men, who might but for it seek offices, and gives them to the men who are servile to the party, its managers and bosses. It says, in substance, to every citizen, "If you want offices, promotions, licenses, permits, exemptions from arrest, light sentences in the courts, easy places on the pay-rolls of labor, or official toleration of your immoral pursuits, be servile to Tammany and its boss; defend its vicious methods; labor to increase its majority; serve and justify its leaders; be silent as to their corruption; disclose no official abuses; make liberal contributions to the Tammany treasury; join its processions; cheer at its meetings; give money to its leaders and clubs; bring the vilest voters to the polls and make them vote the Tammany ticket." It says, on the other hand, to those who with manly independence and self-respect discharge all the duties of good citizens but refuse to act the part of a vassal to a feudal lord: "There are neither places nor honors for you under this government. Let them go to our party opponents — to those who often conspire and coöperate with Tammany leaders — rather than to you."

[1] *North American Review*, 1892, and *Tammany Hall*, p. 69. Apparently for the purpose of conciliating public opinion, or when it knows its interests will not suffer, Tammany, on very rare occasions, elects an officer who is not one of its adherents. For example, in the municipal election of 1892, it nominated a Republican for judge, but it seems to have secretly received $5000 for the nomination.

Tammany and its managers practically say to its adherents, "If you will give us a majority of the votes, we will give you the monopoly of the offices, employments, and spoils which our common victory can capture." This, we aver, is government by coercion, conspiracy, and prostitution, and not "by syndicate."

The patriotic reader has doubtless been asking himself what good comes to the people from enforcing these partisan tests for office? They do not bring the best men into the municipal service. They are needless, because cities would be better off if they had not a mere partisan or politician in their employment; they are deceptive, false, and despotic, because there is not a position in the municipal service for which particular opinions about party politics or religion are in any sense a qualification.

5. It is one of the effects of the Tammany system — of the party system everywhere in municipalities — that it aggravates party animosities, increases party spirit and contention, and more and more separates from each other the most patriotic men in each party, whose coöperation is the fundamental condition of good city government. It also facilitates conspiracies between opposing party leaders for securing offices and spoils, which, as we shall soon see, they habitually divide between themselves. It degrades our civic ideals and the whole subject of city government in the eyes of the people. It publicly violates justice; it makes partisan merchandise out of public functions; it causes selfish politicians and despotic party managers to be feared and courted; it repels good men from the field of their municipal duties and fills them with despair; it causes a general suspicion as to the honesty and justice of all municipal administration; it lays a broad foundation for partisan despotism and corruption.

Take policemen and police justices as illustrations. Obviously no party can gain any advantage — hardly any person but a brazen-faced spoilsman would avow a purpose to do so — by reason of the party or religious opinions of these officials, save through a corrupt prostitution of their authority for partisan or sectarian ends. If these officers are not ex-

pected to take sides with their party or sect, — to defer to and favor Tammany managers and bosses, — of what consequence are their political opinions? Why such desperate contests over their selection, if they are expected to be impartial? It is as obvious that an honest exercise of their authority would not regard the politics of offenders, or the wishes of the party leaders or boss, as it is that a prostitution of their authority may serve the purposes of both personal and party corruption.

6. The authority for removal and discharge has been unhesitatingly used by Tammany — and according to the city-party theory of governing cities may be justly used — to gain the support of voters and to intimidate opponents. Every one who holds a place, a license, or a permit under Tammany understands he must vote for it, and work for it, at his peril.[1]

It is but a logical deduction from the conditions upon which Tammany has conferred offices, licenses, and permits, that those who received them have come under an implied obligation to do their utmost to make themselves useful to the party and its managers. Offices conferred as rewards for party work are to be held subject to the duty of continuing it. Here, in large part, is the secret of the vigorous discipline and cohesive force of the Tammany organization — and, we may add, of all city parties which act on its system. This obligation has seriously impaired the moral tone and independence of all municipal servants who came under it. Those who refuse to conform to it have been regarded not merely as traitors to their party, but as violators of an implied contract and pledge of honor and duty. A besotted partisanship and a spirit of feudal servility, blind to the evils of municipal party despotism, have been thus developed by Tammany by which many even of its worthy adherents have been made incapable of forming any just estimate of its vicious system.

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IV

When such feudal relations prevail, it is natural and easy to extort political assessments from the salaries and wages of the municipal servants to meet the expenses of Tammany and keep its managers in power. If a party may govern a city under a virtual contract that its adherents are to have all the offices and spoils on condition of keeping the party in power, who can deny the right of collecting from those favored adherents the money needed for that purpose? The false sense of honor and of duty to a party thus developed have been so effective that, even since the collection of such assessments has been prohibited by law, they have been paid by a large proportion of the Tammany officers. The danger of being removed on false charges and of being scorned by party associates has powerfully reënforced this perverted sense of duty.[1] The amount of the assessment usually extorted — under peril of removal — from those in the municipal service — including even the school-teachers — has been five per cent annually on salaries and wages. Tammany assessment extortioners, with copies of the city pay-rolls in their hands, challenged the city clerks at their desks, confronted the city washerwomen as they scrubbed the floors, and pursued the poor city laborers to their garrets and their cellars, — a practice which can only befit a half-civilized despotism.[2] It would seem that from a third of a million dollars to more than double that sum has thus been extorted in a year by these assessment collection pirates to be used about managing city politics, carrying elections, and paying the profits of city-party managers and bosses.[3] These vast sums have been

[1] The New York civil service act, Laws 1883, Ch. 354, prohibited the collection of political assessments, but the managers of both parties in New York City have exerted themselves to defeat its purpose. The assessment extortion system seems to have originated with Tammany under Jackson's administration, and the Republican party in New York City apparently adopted it from Tammany. Both parties seem to have sometimes united in a joint assessment robbery of the police force, the fruits of which they shared between them. Laylor's *Cyclo. Pol. Sci.*, etc., p. 154.

[2] 1 Lalor's *Cyclo. Pol. Sci.*, etc., pp. 153, 154; 3 do., p. 785.

[3] There were in 1897 in the service of the city and the county of New York —

used by party managers and bosses in their discretion, for purposes however degrading and corrupt, under no liability to account before any court or to make any public explanation. How much of this money has been used to procure illegal naturalizations and registrations, to bribe and colonize voters, to fill the pockets of the party leaders and bosses, who have suddenly grown rich, none but those who have prospered by such corruption and despotism can tell.

This Tammany practice has been largely imitated in many American cities. Is it any wonder, then, that the trade of managing city-party politics has been profitable, or that city government has been degraded in the United States? If the compensations of these municipal servants were but reasonable, this extortion was in substance party piracy against them; if their compensations were made too high by partisan legislators to facilitate the extortion, then it was an indirect party robbery of the taxpayers and the city treasury.[1]

We cannot be surprised that these servants, thus unprotected and plundered by the government they were serving, were often ready to compensate their losses at the city's expense. Why should they think the city which failed to protect them entitled to their whole time, to their best services, or even to correct accounts? If the ruling party and its agents may thus coöperate in robbing city policemen of their earnings, why may not these policemen levy blackmail upon the keepers of apple stands, market stalls, and bawdy-houses? In fact, the fundamental methods of Tammany, and of city government generally, contain the suggestion and the justification of the greatest frauds and corruptions by which American cities have been degraded.

It hardly need be said that this assessment extortion degrades the whole municipal service, both in its own eyes and the eyes of the people generally. It inculcates a theory

their geographical limits being the same—about 21,000 officers and employees, whose annual salaries and compensation amount to about $20,000,000. An assessment of five per cent on this sum would be $1,000,000 annually.

[1] John Kelly, a boss of Tammany, seems to have publicly defended excessive salaries on the ground that the servants of the cities should be reimbursed for their party contributions. 1 Lalor's *Cyclo. Pol. Sci.*, p. 154.

of universal injustice, servility, and despotism to which only a half-civilized party spirit can make an intelligent city community blind. Were any citizens or any party to propose a law declaring in plain words, (1) that no city or village shall give office or employment to any save adherents of the dominant party, (2) that all city officers and laborers may be assessed or taxed at the pleasure of the managers of this party, and (3) that the money thus secured may be used secretly and at the pleasure of those who have extorted it, to carry elections, keep themselves in power, and to reward their own services, the proposed law would not only be rejected and execrated, but its authors would be regarded as ridiculous and foolhardy madmen. Yet such a law would but give legal sanction to the Tammany system, which prevails, in substance, in many American cities.

V

1. Another Tammany way of getting money from the bestowal of offices — a natural outgrowth of the city-party assessment system — is even more degrading and disgraceful. In substance Tammany has sold many of the offices for which its conventions or managers have made the nominations. It has demanded a sum of money in hand, or assurance of its payment, as a condition of making nominations, even for the office of judge — the transactions being of course thinly disguised as a supply of money for the payment of election expenses. A nomination by Tammany having been generally equivalent to an election, and the sum paid for it having been at least from twenty to thirty times as much as any expense Tammany would incur in the matter, it is no misrepresentation of the transaction to call it a sale. There are good reasons for believing that, in a similar manner, Tammany and the officers it has selected have been in the habit of selling appointments to various grades of office. If the party itself may take money for nominations, why may not its boss, its managers, and leaders follow its example? Ample facts will appear on this subject.

The most disgraceful of these sales, which alone will be noticed here, have been sales of nominations for the office of judge of the higher courts in the city of New York. The regular price of a nomination for the office seems to have been from $10,000 to $15,000.[1]

As every candidate for a judgeship must know that the sum he pays upon a nomination vastly exceeds any legitimate or probable expenses incident to his election, he apparently knows that the claim that the payment is made to cover these expenses is an audacious pretext.[2]

It is obvious that there can be no legal or moral justification of a party in thus selling its favor and influence in the corrupt market of municipal politics. The practice strongly tends to the degradation of the judiciary by bringing upon the bench lawyers of inferior moral tone and capacity. Not the noblest lawyers, but the most unscrupulous or necessitous, who seek office are likely to be the highest bidders for the judgeships which Tammany puts upon the judicial auction market.

2. If the facts could be disclosed at the trial of a prisoner charged with selling his vote, the judge might be confronted with proof that the very money with which he had bought his nomination had been used to corrupt the prisoner, — if, indeed, it had not been applied by the city-party boss or managers to their own use. It hardly need be said that it is of the utmost importance that judges should gain their places in a way which not only leaves them a real liberty to

[1] Writers worthy of credence estimate the regular price at about $15,000, and they say that the price of a district attorneyship has been the same. 1 Lalor's *Cyclo. Pol. Sci.*, p. 154; Ivin's *Machine Politics and Money in Elections*, etc., pp. 56-59 and 84. This is a very instructive volume. Its author had been chamberlain of the city of New York, and has, therefore, had rare opportunities of knowing the secret methods of Tammany.

[2] Honorable men have publicly refused nominations because tendered on the condition of paying money for them. 3 Lalor's *Cyclo. Pol. Sci.*, etc., p. 349. When Tammany triumphed in the judicial elections of 1895, it demanded its price for judicial nominations, — one candidate paying $5000 in connection with nomination to a judgeship in an inferior court, and another paying $3500 in connection with nomination of yet lower grade, notwithstanding the fact that, under the new ballot law of New York, all voting papers were supplied at public expense. *N. Y. Evening Post*, Nov. 12, 1895.

be impartial but allows the people to think they are impartial. It is bad enough that a city party makes the acceptance of its platform a test for judicial office, but it is far worse when it prevents any lawyer among its adherents being a judge until he has compromised his independence by presenting himself as the highest bidder before a party convention, or in the secret council of its managers or boss, as being ready to pay the auction price demanded.

May we not well be surprised that the judiciary in New York City has remained so largely respectable? It is plain that under such conditions a noble judicial independence is impossible.[1] The judicial auction system practically says to every lawyer, "If you would reach the highest honors of your profession, accept the creed of the ruling party — or falsely pretend to do so — and be servile to its boss and leaders; forbear to expose party abuses; take no case against the interest of your party; make no exposure of its abuses, and then you can bid with hope for all the judgeships you can pay for."

It is humiliating to be compelled to think that the servility and hypocrisy thus induced have made it easier for unworthy lawyers to ascend the bench and have dissuaded the noblest members of the bar from attempting to do so.[2]

Such facts seem to go far toward explaining why in recent years the judiciary in New York City has been inferior to what it was before Tammany sold judgeships, — inferior to that of the other parts of the state of New York, — and they also help us to see how city-party managers and bosses have so easily grown rich.

[1] "The son, or the son-in-law, of a judge is sure of a good practice, and referees are appointed from lists which are largely dictated by the professional politicians of both parties." *Atlantic Monthly*, February, 1898, p. 152.

[2] It is not intended to say that the lawyer who makes the highest bid will certainly get the nomination, — for the fear of public opinion may exclude the basest bidder, — but that the price offered, the servility to party interests tendered with it, as well as past services for the party, are taken into account. How much ignorance, how much professional incapacity, how much low moral tone may be counterbalanced by an extra $500 or $5000 offered secretly — perhaps to a boss or to a clique — for the nomination, are among the secrets of city-party action which have been as carefully guarded as were the secrets of the Inquisition or the Star Chamber.

This judicial auctioneering is said to have exhibited such disgraceful spectacles as impecunious partisan lawyers mortgaging their property, and even their judicial salaries in advance, and "giving their notes to bosses," for securing the payment of their bids for a nomination to a judgeship.[1] We repeat that, under these auction sales, lawyers having small practice, low standards of self-respect, and few scruples, are the most likely to be the highest bidders, while lawyers of the higher order naturally shrink from so ignominious a competition. Many lawyers seem to have become so familiarized with these scandalous abuses that their moral standards and sense of professional dignity have been lamentably impaired. The extent of this impairment would quickly appear if a national party should demand $15,000, or any sum whatever, for a judicial nomination to be made by a President it had elected. Who doubts that the country would be shocked by such a scandal, or that the party approving it would be overwhelmed and disgraced?[2]

In these facts we may see the truth we have before stated, — how much higher is the moral tone of national-party politics than that of city-party politics. Great numbers of worthy men, who in their besotted party zeal vote for judicial candidates whose nominations have been thus bought, would indignantly oppose the enactment of a law which should declare that no lawyer should be a judge in New York City until he had paid the price demanded by a city party for his nomination.

Public opinion in New York City — which the ruling party always fears — has even in recent years caused several excellent judges to be elected, yet it is true that the judiciary

[1] 1 Lalor's *Cyclo. Pol. Sci.*, p. 153; *Atlantic Monthly*, February, 1898, p. 152.

[2] The Bar Association of the city of New York, recognizing its duty, has repeatedly considered the means of making its influence effective against such nominations. (See its report of May 10, 1898.) We fear the Association will accomplish but little until it boldly proclaims a duty and purpose on its part to protect the interest of the people in this matter, and denounces the pretended right of parties to monopolize judicial nominations in order to make spoils and merchandise for rewarding their favorites and filling their treasuries. When it shall do this, it will win a noble victory, and these abuses will cease.

of New York City has deteriorated under city-party rule. Her noblest judges belonged to a past generation. It is for the reader to decide whether a judge who has bought his nomination of a party is likely — is free — to adequately resist its requests for facile naturalizations or for lenient rulings in favor of culprits from its own ranks. Criminals prefer to be prosecuted by a district attorney, and to be tried by a judge, who have bought their offices of the party to which they all belong, as these criminals also much prefer a jury wholly drawn from among the adherents of their own party. This at least is certain, that the judges of New York City will never be what they should be so long as any judge is tolerated among them, or by the bar of the city, who has bought his nomination of a political party.

CHAPTER V.—MUNICIPAL GOVERNMENT BY PARTY AS ILLUSTRATED BY THE TAMMANY DEMOCRACY (*continued*)

Prices paid to Tammany for various offices. Prices paid her for judgeships since the Greater New York was created. The police courts and the police force as sources of Tammany income. Party theory of governing cities. Tammany's relation to the liquor and lodging-house interests. Blackmailing in connection with licenses and permits. Tammany extortion and intimidation in connection with legislation. Tammany methods, agents, and theories for making city control absolute and profitable. The Tammany organization, districts and officers. Tammany "Leaders." Patronage apportioned to districts. Laborers made subservient to Tammany. Tammany captains and leaders are local bosses. Functions of Assembly district leaders. Gross wrong of making party leaders police justices. How leaders of different parties conspire together in city elections Why city parties do not expose abuses. How Tammany and the city-party system degrade the police administration. How Tammany has prostituted the police courts. Our bad police justices appointed by partisan and autocratic mayors.

1. WHEN a city party can exact its price for a judgeship, it can easily enforce its terms for lower places. No one, apparently, could be a sheriff, a district attorney, a police justice, a civil justice, a coroner, a commissioner, or a head of a bureau under Tammany without paying its price either in money or in services for the party or its managers.[1]

[1] For the office of county clerk, or register, $15,000 or more seems to have been paid; for that of alderman, $13,000; for that of sheriff, $25,000; for that of comptroller, $10,000; for that of mayor, $20,000. *Machine Politics*, etc., pp. 50, 56, 57, 67. Tammany has been so rigid in exacting a money price for its favors that it requires payments even from the members of the committees of its own party organization, thus collecting an annual income of many thousands of dollars. *Tammany Hall*, p. 135. Tammany, according to the journals, has continued its mercenary methods of dealing with judicial nominations and elections since the creation of the Greater New York in 1897, though the uncertainty of its victory in the election of this year apparently caused the price of judicial advancement to fall considerably in the Tammany market. The sum thus apparently shown to be paid to its finance committee in 1897 by the person nominated and elected by Tammany to a judgeship was $5000; the sum apparently paid by the person nominated and elected by it to a justiceship was over $850; see further on this subject Ch. XVIII.; the person nominated on the Citizens' Union ticket for district attorney in the election of 1897 paid nothing either for his nomination or his election expenses. All ballots at this time were prepared, printed, and supplied at the public expense. *N. Y. Times*, Nov. 8 and 10, 1897.

2. The police courts of New York City have furnished significant illustrations of the illegitimate income of the ruling city party and its managers. In 1894 there were fifteen police justices in the city, each having a salary of $8000 a year,— a sum sufficient to command a grade of justices far superior to those generally in office. There is reason to believe that Tammany has exacted a sale price of not less than $2500 for the original appointment of a justice for a term of ten years, or $37,500 for filling these fifteen places, to which must be added an assessment of five per cent on their salaries annually, or $6000 in all, thus giving an annual income from these justices of not less than $10,000. To all this the assessments upon the salaries and wages of other police court officials and employees must be added. We shall soon see how lamentably this city-party system has degraded the police courts.

The police force may supply another illustration. There were in 1896 about 5000 members of the police force of the city of New York, and their annual salaries amounted to more than $6,500,000, upon which an assessment of five per cent would yield $325,000 annually.

There are reasons for believing that Tammany and its managers have received from $200 to $300, if not more, for each appointment to membership of this force, save in cases in which Republican party managers in conspiracy with Tammany have shared in the spoils. That large sums of money have been paid for police promotions, and that the payment of several thousands of dollars has been necessary to secure the position of captain in the police force, can hardly be doubted.[1]

3. It is a significant illustration of the effects of city-party rule that, though the police force of New York City was in 1894 generally believed to have become corrupt through partisan favoritism, all investigation of the matter was opposed by one party, while the sincerity of the other in formally asking it was so much distrusted that for a time honorable

[1] See further facts in this chapter.

lawyers seem to have refused a retainer from a legislative committee. Nor is it less significant that this investigation did not originate with any party or party leader, but had its origin and strength in a non-partisan body,— the New York Chamber of Commerce,— and that it was made effective only because a powerful non-partisan public opinion overawed the party in power at Albany.

If we bear in mind the fact that a party governing a city as a rule allows no man to be a judge, district attorney, sheriff, justice, coroner, or policeman unless (1) he is one of its adherents, (2) has paid its price for his office, (3) has practically pledged himself to defend its action and that of its leaders, and (4) has engaged to electioneer in its behalf, we can readily understand its methods of dealing with grog-shops, bawdy-houses, low lodging-houses, and gambling-dens. Tammany has largely dealt with them on the theory of gaining the most votes possible through appeals to their hopes and fears. A party makes no moral discriminations, and the vilest voter's ballot counts as much as that of the noblest citizen. What more natural than that the proprietors of such places should seek to stand well with the ruling city party? A New York City police commissioner has just declared in a public speech,[1] made after investigating liquor saloons, "that every saloon has been the caucus room for ward politics." Mr. Ivins shows that out of eighty-one conventions and primary meetings held by Tammany in 1884, fifty-six were held at liquor saloons,[2] and it is familiar knowledge that of her delegates to conventions and her members elected to the legislature, the grog-shop interests have supplied an ominous proportion.[3]

Among the persons appointed as police justices by one of the Tammany mayors of New York City (before 1898) there was a champion of the grog-shop interests of a character so notorious as to cause a public scandal, and a vigorous protest

[1] *N. Y. Times*, July 13, 1895. [2] *Mach. Pol.*, pp. 20, 21, 26.

[3] Even the philosophical defender of the Tammany system whom we have cited recognizes the liquor dealers as being generally its supporters. *Politics in Democracy*, p. 76.

was made by the better citizens against the appointment, — a fact of great importance when we come to the question of reforming city government by giving autocratic power to mayors.[1]

4. The facts are familiar that the grog-shops and the low lodging-houses are the chief recruiting places — the shelters and the sally-ports — of the vilest classes of voters. There the leaders, the captains, the lieutenants, and the miscellaneous minions of Tammany, whom we are soon to consider, find the chief supply of human depravity which they gather, bribe, and coerce for false registration and corrupt voting. The grog-shop keepers and gamblers can supply the money, and the lodging-house keepers can shelter the voters needed by a ruling city party, while the policemen, the district attorneys, and the police justices it controls have ample means of reciprocating favors, as we shall soon see.[2]

II

1. The system of extortion and blackmailing to which we have referred has prevailed in connection with a long series of miscellaneous licenses and permits, from those of theatres, halls, dance houses, pawnbrokers' shops, stables, vaults, and junk-shops, down to those for numberless soda fountains, apple stands, and stations for peanut roasting and newspaper sales. Even the most insignificant of these may secure at least one vote for Tammany, and perhaps prevent several voters opposing it. The investigations of 1895 made it clear

[1] The report of the excise board of New York City for 1893 shows more than nine thousand places licensed for selling liquors, and that more than $1,500,000 were collected as license fees during the year. It seems to be the fact that at least five persons on an average have a pecuniary interest in each of these grog-shops, — forty-five thousand persons in all, or more than half the number of Tammany's then majority.

[2] The short residence which New York laws have required for voting in a city district has greatly facilitated both fraudulent registration and corrupt voting. Neither party has been willing to offend a class of low voters which each has hoped to control. When city-party government shall have been suppressed, we may hope to have the residential conditions for voting framed in the public interest, and not as now mainly in the interest of city parties and their managers.

that New York policemen had robbed the occupants of these stands with as little scruple as their official superiors had blackmailed the policemen and extorted assessments from city salaries. Can any one be quite certain that both classes of robbers were not emboldened by the facts — the natural outcome of city-party government — that their arrest could hardly be made save by a policeman who had paid Tammany for his appointment; could hardly be brought to trial save by a district attorney and before a judge each of whom had paid Tammany's price for his nomination? Can any sensible man think that so vicious a system can be suppressed so long as our laws facilitate party domination in city affairs?

2. If the exigency would permit, we would gladly exclude all facts disgraceful to New York City. But there is a grave need that the truth should be known. A well-informed inquirer has recently set forth the results of his investigations of New York City government.[1] Tammany, he says, "raises immense sums, but they are raised by contributions and by blackmail, not by theft."[2] "No one," this writer further says, "who has not lived in New York can imagine the despotic power which Tammany Hall exercises there. No citizen is too humble to be beneath its notice; no citizen is too rich or too powerful to be safe from its interference. In many districts the Republican party organization is a sort of annex to Tammany; many of the Republican inspectors of elections are in the pay of Tammany. Rich and respectable Republicans in the city shrink from vigorous warfare against Tammany, because they do not want to be harassed in respect to their real estate, their shops, their railroads, their tax returns."[3]

[1] *Atlantic Monthly*, February, 1894, pp. 245–251.

[2] This transition from theft to blackmail which has been made since Tweed's time illustrates Tammany's fear of the greatly increased power of public opinion. It has probably never since 1870 got more money by indefensible means than it was getting in 1894, when public opinion had a brief triumph.

[3] The belief is now quite general among the best-informed citizens of New York that many of the Republicans who have been most active in the city organizations of their party have been guilty of conduct about as difficult to justify as that of the managers of Tammany itself. At this time (December, 1895) a majority of these Republicans have made one of the most indefensible party enrolments

After referring to the vast sums extorted by Tammany from the liquor dealers, the same writer declares that "still another and perhaps a greater source of revenue is found in the criminal classes. Every gambling-house, every house of prostitution, pays hush money through the police, and, it may be added, to the police." Referring to the use of Tammany power for extortion and blackmail in the sphere of street openings, contracts, and legislation, he gives his own experience of payments (in 1893) to Tammany in these words: "I know of one case where $2500 were paid by a corporation for a small piece of legislation. I know of another case where $15,000 were demanded for similar but more important service;" but he adds that after the demand had been yielded to, the defeat of Tammany in the last November (1893) election emboldened a refusal to pay. He speaks of another case, at the same period, in which Tammany demanded of a corporation $60,000 for some entirely proper legislation; he says "the company was advised by its counsel, an eminent member of the bar, to hand over the money;" but here again the same election, by defeating the Tammany party, relieved its victim.

These statements — so far as the author is aware — have remained unanswered by Tammany's supporters. In view of such facts, can it be any longer a matter of surprise that so many city-party managers get rich?[1]

III

1. From what Tammany as a city party does, let us turn to its methods and agents for doing it. It is not to the credit

to which party debasement has ever given birth. If we could spare the space, it might be easily shown that as early as the second term of President Grant the New York City leaders of the Republican party were in the pay of Tammany, and conspired with its leaders for common plunder — a treachery for which they were denounced by the Republican governor of New York. See 3 Lalor's *Cyclo. Pol. Sci.*, etc., pp. 347, 348.

[1] We have no space for the definite statements of this writer as to the manner in which Tammany minions have persecuted stablemen, junk dealers, undertakers, cigar venders, apple-stand keepers, and other permit holders who have failed to pay the blackmail demanded of them, have dared to refuse to work for Tammany, or have ventured to protest against its extortions — statements which we shall find that the New York investigations of 1895 have largely confirmed.

of the prevailing discrimination concerning municipal evils and the remedy for them, that while the so-called "admirable discipline" of Tammany has been greatly praised, its tendency to corruption and servility have been much less noticed. We have seen that Tammany insists that the influence of the city government may be used for bringing voters to its support, money to its treasury, and patronage and power to its managers, without other restraint than the criminal law. It everywhere appeals to party zeal, to selfish interests, to the ambition and prejudices of its adherents. It never calls for sacrifices of party interests to promote the general interests, — holding him to be most useful to his country who is most useful to the party majority. It never imperils the loss of votes by a policy of reform. It allows no one to overbid it for the support of the vilest voters it needs. It claims a right to seek victory by whatever means it thinks most promising. Mr. Ivins declares that "the entire political machinery . . . is incident to getting in the votes on election day. Every part of the machine," he says, "is organized with this object in view and no other."[1]

2. Let us consider some of the effective parts of the Tammany organization. The city of New York is by law (1894) divided into thirty assembly districts, from each of which a member of the state legislature is annually elected. In each assembly district Tammany has a separate organization, at the head of which is a very important party officer or agent, designated "a leader," — a sort of patronage purveyor, electioneer-in-chief, and feudal lord or boss of assembly district

[1] *Machine Politics*, pp. 45, 46; and even Tammany's official publication almost in terms admits as much. *Tammany Hall*, pp. 106, 108. By the word "machine" is meant the combination of despotic organization, coercive party action, and vicious methods, through which the managers of a despotic party accomplish their unworthy purposes. The word "machine" suggests a reproof, and implies despotic methods, unpatriotic action, and an excess of organization and party coercion. We cannot accept Mr. Ivins's suggestion that the organized methods and agencies of any party may be properly called its machine. It seems desirable that this reproachful word should be applied only in the sense we have indicated, and that legitimate party organizations and methods should not be reproached and discredited by its application to them.

politics.[1] Each leader or boss of an assembly district is held responsible, at the peril of losing his place, for making its Tammany vote as large as possible, by whatever means. He is given every power thought useful for this purpose, having patronage to dispense, money to expend, and authority for promising offices, as well as places in the labor service, for votes.[2]

The assembly district leader may call on officials and employees selected by Tammany to aid him in his electioneering schemes, and they must do so. These assembly districts are divided by law into election districts, there being 1137 election districts in the city, in each of which there are about 300 voters.[3] In each election district Tammany has a captain, as to whose selection and conduct the leader of the assembly district is potential. Each captain has under him from ten to twenty-five subordinates, — say an average of twenty to an election district, or one to every fifteen of its voters, — whom Tammany officially designates "lieutenants or aides."[4] This semi-military organization fitly suggests the military and despotic discipline and feudal subordination upon which Tammany relies. The especial duties of these "captains and aides" and their henchmen is officially declared to be "the management of their election districts," and "to acquire a knowledge of all the voters in their election districts," and, we may add, to induce as many of them as possible to vote the Tammany ticket,— the theory being apparently that of the celebrated division into "blocks of five."[5] Thus the whole power of the central machine is brought to bear upon each voter.

[1] In 1895 a change was made by Tammany under which there were two leaders appointed for each assembly district, and the amended constitution of New York which then went into effect provided for thirty-five assembly districts in New York City. Since this was written, the law creating the Greater New York has caused changes in details but not in system or methods.

[2] The Republican party in the city has had an analogous organization, — largely modelled after that of Tammany, — which, however, was modified in 1895.

[3] This was before the assembly districts were increased in 1895.

[4] Mr. Ivins thinks that one-fifth of New York City electors are under the pay of parties, or candidates, on election days. *Machine Politics*, p. 72.

[5] *Tammany Hall*, p. 63.

Every Tammany-selected officer, and especially every policeman and police justice, is expected to assist these leaders, captains, and aides. To threaten Tammany's frown and to promise its favor — the favor and frown as well of at least many of the officers Tammany elects or appoints — are the potential arguments of this vast electioneering force — a force which seems to be equal to one out of every fifteen or twenty of the voters.

Its members are continually stimulated by the hope of office or other favors, if they increase the Tammany vote. They dread dismissal and disgrace if they do not. They promise offices and places on the pay-rolls of labor; they study and report the weak side of every voter's character and condition; they suggest how particular voters may be easiest cajoled, coerced, or bribed; they explain how the wish for a license or a permit, or the fear of losing one, may be made to control the most votes. Their doings altogether constitute a nefarious and despotic kind of activity as discreditable to those who engage in it as it is useless for any good purpose. It degrades all municipal politics. There have probably been more than ten thousand of these electioneerers, bribers, and intimidaters in the service of Tammany in New York City at the same time.

3. Under the city-party system, patronage favors and spoils are apportioned among the districts, and the head of each has a voice in awarding them, — a practice which strongly tends to bring inferior men into office. The election district captain has much of the duty of a spy and an informer, — he is a Lilliput boss under the leader of the assembly district, — with ample means of making his influence effective. He is powerful for awarding and withdrawing permits through a wide range — from those for vaults to those for selling peanuts, apples, and soda. He has many ways of harassing independent voters, and filling his own pockets at the same time. He can easily make himself the terror or the efficient champion of the keepers of lodging-houses, bawdy dens, and junk-shops, for he can invoke the aid of his powerful leader. He suggests to Tam-

many policemen and police justices those who should not be arrested at all, those who should be let off easily, those who should feel the severities of the law,—and especially when a Tammany leader—his direct boss—may be presiding as a justice in a police court.

4. Before a laborer could get employment in the service of the city, prior to the reform of 1895, he must have the approval of the captain of his district, and such approval was regarded as involving a pledge to vote for Tammany. Thus many voters were secured, and a spirit of servility was developed. Imitating the extortions of Tammany, these captains seem to have exacted a commission from the laborers for their influence in securing them employment, thus giving a practical significance to the boss's declaration we have cited from the *North American Review*, which declares that "all the employees of the city government . . . should be members of the Tammany organization,"—a method of dealing with the honest laboring classes which is not only an insult to their intelligence but an outrageous invasion of their liberty.

In these facts we can see that under the city-party system the captains of the election districts are their local bosses, much as the leaders are the local bosses of the assembly districts, and the boss-in-chief is the feudal master of the party-ruled city. Hence to eliminate the boss system from Tammany, or from any city governed by a party, its primary and fundamental organization must be framed anew. The city-party system as naturally produces new bosses as the hydra produces new heads.

The reader has doubtless been saying to himself that these captains and their lieutenants do very little that is useful, and that their activity is as mischievous and degrading as it is needless. They do nothing for the education or moral elevation of the people; they appeal mainly to their greed, their party spirit, and their fears. They cause no independent, worthy citizens to vote. It would be far better if there were no captains or aides, so that the people could freely vote according to their own sense of duty. The vile voters

would not in that event be hustled to the polls, and most of them might not vote at all.

IV

1. The functions of the assembly district leaders — inevitable under the city-party system — are so important that we should get a clear view of their doings. Offices, patronage, and spoils — save the smaller allowed to the captains, and such as the boss-in-chief retains for himself — are apportioned among these leaders — each leader being the local party-purveyor and boss of his assembly district. He is regarded as responsible for its party management. To him all party adherents within his district must be duly obedient, if they would have any favors or any position in the party.

These leaders have no duties connected with the improvement of city government or with the education, the political principles, or moral elevation of the people. The assembly district leaders, to whom the election district captains owe a feudal allegiance, are in theory responsible to the general committee of Tammany, but the powers of this committee are in practice substantially exercised by an executive committee made up of the assembly district leaders themselves and the chairmen of three other committees.[1] These leaders — each a sort of feudal lord in his own assembly district and selfishly interested in the increase of his own power and that of his associate leaders — are subject to the boss-in-chief. They are otherwise irresistible under Tammany, and the city-party system generally.[2]

2. The duties of leaders require adroit men of a partisan, proscriptive, and audacious cast of mind, undeterred by nice

[1] *Machine Politics*, pp. 16, 17; *Tammany Hall*, pp. 63, 136.

[2] Mr. Ivins tells us that "the district leader . . . is as a rule chosen by the boss of the party, or by the votes of the majority of the other district bosses," save in cases where a leader has a personal following strong enough to compel his selection. He further says that in practice the boss-in-chief, and the few with whom he advises, give general directions which the district leaders obey, and that each of them is able, in conformity thereto, to govern his district. *Mach. Pol.*, pp. 8, 10, 46. This machinery for party despotism is certainly very ingeniously contrived.

scruples as to the methods of gaining voters. Their primary and paramount duty is to increase the vote of their party by every possible means, and we have seen what effective forces for the purpose are at their command. They are generally unscrupulously active in discharging it, bringing every form of human depravity, imbecility, and ignorance to the polls. They and their minions search the garrets and the cellars, the prisons and the asylums, the grog-shops and poorhouses; they lead and hustle to the ballot boxes the vilest specimens of humanity which can be made to cast a vote. The electorate of New York City is thus debased by thousands of vile voters, who, but for this party-leader solicitation, coercion, and activity, would probably rarely vote at all.[1]

Yet we must not assume all these leaders to be wholly unpatriotic or consciously corrupt. Some of them are doubtless patriotic and sincere; some of them have so idealized their party and have become so completely the victims of an intense party spirit and vicious methods as to have no just sense of their pernicious influence as leaders or of their higher duties as citizens. The fierce, blind partisans, who think everything done by their own party to be right, and everything done by their opponents to be wrong, hardly think it wrong to serve their party by gaining voters by means however reprehensible.

3. City-party leaders are selected because they are believed to be unembarrassed by very serious scruples as to the means of gaining voters. Neither the managers of Tammany, nor of its city-party opponents, have ever been known to dismiss, or even to condemn, a leader for the most flagitious use of his opportunities, or to reject a vote however corruptly obtained by him. To know well the haunts of the

[1] In 1894 a vain effort was made to subject to some form of punishment the leaders and their minions who attempted to secure the votes of inmates of a municipal poorhouse. Party leaders and captains have insisted that idiots shall be allowed to vote. In February, 1894, cases were before a criminal court of New York City in which the shameful fact was established that the inmates of the city prison, through the efforts of party agents, had been allowed to vote in the district where it is situated on the ground of their having gained a residence for voting therein by living in the prison itself.

degraded and corrupt voters and how to bring them to the polls; to be apt in preventing complaints against the supporters of Tammany by which votes would be lost; to be expert in procuring lenient treatment for Tammany malefactors at the hands of policemen and police justices; to be skilful in the base arts of naturalization, registration, and voting, and in the counting of votes; to be effective in protecting the officers who prostitute their authority in aid of Tammany, and in harassing their opponents; to be expert in all the diabolical ways of increasing the vote of the criminal and depraved classes; to know how to get the most votes possible in return for offices, labor-service places, licenses, permits, and money, used as spoils,—these are important parts of the qualifications for a Tammany leader.[1]

4. These leaders need no identification with the higher interests of a municipality, no ability for influencing patriotic or noble minds, no inclination to take part in the religious, moral, or educational efforts by which municipal life is purified and elevated. They have no functions in these higher spheres. They would not be less effective if they were pugilists, gamblers, or horse-racing politicians. Most of their activity is in the sphere of base motives and immoral life.

It would be far better for a city if most of the voters whom party leaders, aided by their captains, bring to the polls did not vote at all, and probably most of them would not if not corruptly persuaded or frightened. What spectacle could be more humiliating to an American patriot, or more disgraceful to his country, than those often presented in grog-shops, low lodging-houses, and gambling-dens when party leaders and captains of different parties, cash in hand, are

[1] Mr. Ivins gives these illustrations of the doings of these leaders: "A young man is arrested for fast driving, the district leader must visit a police justice and intercede for him. . . . A city ordinance has been violated, . . . the leader must see the corporation attorney and have the complaint pigeonholed, or see the justice and have it dismissed . . . If a liquor dealer is arrested, the leader must leave no stone unturned to secure his escape unpunished. There is no patronage," says Mr. Ivins, "which a leader desires so much . . . as places on the police force." *Mach. Pol.*, pp. 11, 12, 13.

competing for the support not only of the most vile among their own native-born citizens, but among the degraded and criminal emigrants, as ignorant of our laws and language, perhaps, as they were regardless of the laws of the country from which they have fled. In such scenes of party electioneering, we may see the real application of much of the money contributed by respectable party zealots or cowardly men of business, who would shrink from directly authorizing the use which these party leaders make of it.

The power of the Tammany leaders over the criminal class has been immense. Who can tell how heavy blackmail a gambler or a burglar must pay, or how many votes he must provide, to make it certain that — by the advice of a leader — a policeman will not arrest him or a police justice will not hold him? The influence of Tammany leaders and captains upon the execution of contracts and the enforcement of ordinances is great and profitable. Mr. Ivins makes it clear that if a city contractor would have mild inspections and favorable interpretations of their contracts, they had better stand well with the leader of the district where their work is done. Is it any wonder that the positions of leaders should be earnestly sought, as well for profit as for power, or that those who fill them should — like bosses of a higher order — become rapidly and mysteriously prosperous, if not rich?

5. It seems almost incredible that the intelligent population of our great cities have not been aroused to the peril of so flagitious a party system, in respect to which the Republican party managers of New York City have been less guilty than those of Tammany largely because they have not had so much power, or so many offices and places to fill. If the horde of these vile voters — probably from three thousand to six thousand in number in the old New York City — whom this system brings to the polls could be gathered in a public square, possibly even those leaders and captains would be abashed, and certainly the intelligent and patriotic people of the city would be appalled at so ominous a suggestion of the impending calamities which city-party government threatens.

6. Nothing can be plainer than that these party leaders

are unfit to hold office, and especially any office of a judicial nature. Yet Mr. Ivins has shown that, a few years ago, when Tammany ruled the city, its assembly district leaders were receiving about $119,000 annually in salaries from the city treasury, and that her captains were as liberally provided for in the same way. He further stated that the leaders of the Republican party in the city were at the same time receiving $32,000 annually as official salaries from the city. The reader must decide whether these facts disclose a conspiracy. Obviously, a ruling city party could not more effectively silence the criticism of its opponents and secure impunity for its own maladministration than by bribing the leaders of their opponents.

In 1894 the leaders and captains of Tammany were receiving still larger sums as city officers. Six police justices, who were among its leaders, were receiving $48,000 in annual city salaries.[1] Other Tammany leaders were also receiving large salaries annually from the city: one was a coroner, for whom Tammany bruisers would naturally be grateful; two were police commissioners, and another was an excise commissioner, positions in which the zeal of Tammany partisanship and the spirit of a leader are a public scandal and calamity; another was a fire commissioner, a place in which there is the amplest opportunity for prostituting power for party advantage. In every one of these places a decent regard for the interests of the people imperatively requires candid and impartial officers, utterly unlike the district leaders whom a ruling city party selects to manage its elections. To all such officers, the duties of a party leader would be repulsive.

It should not be assumed that there is anything generically peculiar and bad in the Tammany leader system, it being only the most developed, despotic, and degrading result toward which the city-party system is everywhere tending. The Republican party in the city of New York had its organization and leaders, much like those of Tammany, in each

[1] This making of police justices out of party leaders is so gross a violation of justice and decency that we shall treat the subject in another chapter in the light of additional facts.

assembly district, and they had, before 1894, become intolerable.[1]

V

1. Since the first draft of this chapter was made, the proceedings of the criminal courts of New York City have strikingly confirmed the evidence it contains of the common guilt of the leaders of both of the great city parties and of their conspiracy together for betraying the people and cheating at elections. Within a month (March, 1894) a leader and other electioneering agents of each of the great parties have been taken to state prison on the same train for common fraud or conspiracy in the same New York City elections. These proceedings are very instructive. They were not taken by either party or its managers, neither apparently caring for self-vindication or to bring criminals to justice, but had their origin in a non-partisan organization,— the New York City Bar Association. A committee of this body, made up of adherents of both parties, investigated the facts and caused the authorities to bring large numbers of the culprits before a grand jury. Though the investigation was of necessity limited, the astounding number of thirty-seven distinct crimes, involving seventy-five offenders, were found to have been committed almost wholly by party agents in a single election. About forty of them were convicted.

Though the larger proportion of the offenders were adherents of Tammany, yet among those convicted were several Republican election officers who betrayed their party to its opponents. The offences were of a motley variety, ranging from perjury, vote-stealing, the fraudulent counting and rejecting of votes, and conspiracies of various kinds between

[1] In 1894 the Republicans reorganized themselves in the city of New York in the hope of relief. They made the small election district instead of the assembly district the unit, but they retained the party methods, and as a result, as we shall elsewhere show, the abuses under the new organization have even been worse than under the old, and they have since abandoned the little district system in despair. We have only to turn to Philadelphia to see that the chief evils are due to the party system rather than to the particular party in power. The New York Democrats also made a sort of party reorganization at nearly the same time, but it was so superficial as to leave the old party methods still dominant.

election inspectors of different parties, down to the most contemptible forms of lying and miscellaneous depravity, highly suggestive as to the degrading effects of city-party control of elections.

2. So, also, the committee of the New York legislature which investigated municipal abuses in New York City in 1894 had its origin, as its report declares, in "resolutions by various prominent and representative commercial and municipal reform organizations of the city of New York, by which charges were made against the police department;" and we may add that no party and no party managers or leaders had any part in causing the investigation to be made until the public opinion demanding it had become too strong to be safely resisted. Yet despite such facts, tens of thousands of worthy citizens, blinded by party spirit, thoughtlessly accept the partisan theories that all great forces for reform and all chances of good city government must spring from political parties. Instead of choosing fair-minded, impartial persons to count their votes, as they would to count their moneys or to educate their children, they select rival pairs of intense partisans, — openly admitting that no one of them can be trusted alone.

3. In view of such facts, it is not strange that thoughtful men are more and more clearly seeing that the city-party system is inevitably vicious, and is likely to become more so as our cities grow larger. Very likely the reader has been saying that it would be far better if these assembly district leaders were abolished, and what they do were not done at all. Surely if the vile voters they bring to the polls should not vote at all, no city would be the worse for it. If one party thus lost more voters than another, it would be that party which is most corrupt, degraded, and despotic. Every city party excuses itself for making corrupt appeals for the vile and mercenary vote by declaring that if it should forbear to compete for it, its opponents would capture the whole of it. Obviously, we can suppress this evil only by expelling the party methods from city and village affairs.

VI

The influence of Tammany, and of city-party theories and methods generally, upon police administration has been disastrous, and it threatens still greater evils. The subject will be treated at large elsewhere, but some fundamental principles should be noticed here. These propositions seem to be indisputable: (1) That a policeman should not be a partisan and should utterly disregard both the political and religious opinions of citizens; (2) that in making selections for the police force, these opinions should not be considered; (3) that a policeman should not allow zeal for any party or sect to affect his official conduct; (4) that his tenure of office should not be dependent upon any party, but upon personal merit and fidelity alone; (5) that no party should be allowed to impose any assessment or duty upon him; (6) that no party, faction, or party leader should be permitted to coerce him or to ask any favor at his hands; (7) that the police force should not be regarded as a governmental power which any party or boss may use for its own advantage.

Yet we have seen that Tammany and the city-party system repudiate and habitually violate every one of these principles. Instead of providing police commissioners who will protect the rights and just independence of the members of the police force, Tammany — often aided by its opponents — has placed it in charge of scheming politicians and unscrupulous party leaders, who have done their utmost to prostitute it for partisan purposes. To make a party leader a police commissioner is one of the most flagitious offences of which a party or a mayor can be guilty. When of late two of the police commissioners were Tammany leaders appointed by a Tammany mayor, and the other two were Republican party leaders, also appointed by a Tammany mayor, there was exhibited a burlesque of justice and of official duty and decency which disgraced republican government itself.

Such appointments practically say to every policeman: "You have as good a right as your party, its leaders or boss,

to use your authority for private advantage and to coerce and intimidate everybody within your power." The lesson was easily learned, and the degradation of a large part of the police force of New York City was the consequence. The report of the legislative committee which investigated this force in 1895 declares, in substance, that it has been shown that in a very large number of election districts almost every conceivable crime against the elective franchise was either committed or permitted by the police; that Tammany gained many votes by their connivance; that the police were sometimes found to stand in actual hostility to efforts to "suppress vice"; that witnesses who were subpœnaed by the committee stood in terror of the police; that men of business were harassed and annoyed in their affairs; that strong men hesitated when required to give evidence of their oppression, and whispered their stories.[1]

If anything could be more lamentable and ominous than the facts which the committee reported, it would be the part of their duty which they failed to discharge. They apparently had no condemnation for party tests for police officers; no rebuke for seeking party advantage through the use of police authority; no objections to making police commissioners and police justices out of party leaders; no suggestions for taking the police force out of party politics; no non-partisan remedies for protecting worthy policemen, faithful in the discharge of their duties, against cruel injustice at the hands of piratical party leaders and corrupt partisan commissioners and justices.

[1] The report seems to show that nearly a hundred policemen were paraded before the committee, who had been convicted of unwarranted assaults on citizens and yet had never been suspended from duty; that the levying of blackmail by policemen upon assignation houses, gambling-dens, and other places of illegal resort had been reduced almost to a system; that their proprietors paid for their illegal privileges; that the outcasts of society paid patrolmen for the privilege of soliciting on the streets; that a police commissioner hardly seemed ashamed in confessing that he habitually favored candidates for appointments upon the police for party reasons; that appointments to this force — especially when not made for party reasons — were generally made upon the payment of a bribe of $300 or more, and that promotions were secured by the payment of money — a captaincy costing from $10,000 to $15,000.

VII

1. Most of what we have said concerning the relations of Tammany and the city-party system to the police force is applicable to their relations to the police courts. Yet, as in many cities of the Union evils of a serious character have their origin in party interference with the minor criminal courts, and these evils have had their extreme development in New York City, the subject deserves further notice. A justice of the peace has a jurisdiction which is in part civil and in part criminal, but in New York City the criminal part of this jurisdiction is conferred upon police justices. Prior to the reform made in 1895 there were fifteen of these justices in the city, who were appointed by the mayor for a term of ten years. About eighty thousand arrested persons — more than two hundred each day — were annually brought before these justices. A large part of this horde, who vote, are members of the vile class of voters whom, as we have seen, party leaders and captains lead and hustle to the polls.

It seems to be too clear for argument that the propositions we have just laid down as applicable to policemen are equally applicable to police justices and justices of the peace. Just in the degree that these officers are partisans, or desire to make their judicial action beneficial to any one party rather than another, they are unfit to be justices, and are likely to conspire with politicians and party leaders in the prostitution of judicial authority for party advantage. It seems almost incredible that sensible people are unable to see that particular sectarian or party opinions are no part of the useful qualifications for being a justice.

Yet vast numbers of worthy citizens, unconsciously yielding to a besotted party spirit, enter into vicious party contests for selecting these justices on party grounds,— citizens who would nevertheless feel insulted if charged with a purpose of gaining party advantage through judicial action. Why, then, do parties everywhere interfere with, and generally dominate, the choice of police justices, while many good citizens take no part in their selection? The reasons are

plain. Law-abiding citizens, not regarding themselves as likely to be directly affected by the character of the justices, quite generally neglect to exert their influence; and, as a consequence, small, unscrupulous, partisan lawyers, or base politicians ignorant of the law, for the most part secure these offices. In the city of New York, in 1894, when the reform movement began to be effective, only six of her fifteen police justices were lawyers at all, or, in other words, knew the law they assumed to administer.[1]

2. Tammany, and city parties generally, have treated criminal justices as partisan forces to be used for their own advantage. It would be utterly indefensible even to select all of them from their own party, but they have done much worse. They have sometimes made police justices out of those preëminently unscrupulous and diabolically expert party manipulators who can be found among "city-party leaders." Such a leader is as unfit to be a police justice as a pimp is to teach a young ladies' school or a wolf is to guard a sheepfold.

By putting these leaders into the seats of criminal justices, the very men whose party duty it is to increase their party's votes to the utmost, even by coercing and bribing criminals and desperadoes, are made to preside at inquiries into their offences with authority to dismiss charges against them. The same party leader who last week perfected a scheme for securing fifty fraudulent votes, may next week, as a police justice, sit in judgment both upon the voters and the politicians who, under his order, coöperated in the execution of the scheme. A more scandalous burlesque of party decency and judicial propriety than this union of a party leader and a justice in the same person can hardly be imagined. To long escape municipal degeneration under such methods would be little less than a miracle. Yet we repeat that at the end of 1894 at least six Tammany leaders were police justices by the appointment of Tammany mayors.[2]

[1] But under the amended law since enacted, no one can be such a police justice unless he has been a practising lawyer for at least five years.

[2] It is worthy of notice that the few Republicans who had recently, before

3. It is impossible to exaggerate the importance of these justices being upright lawyers, endowed with a high sense of justice and great moral courage. They have vast discretionary powers, and their action attracts very inadequate attention from the public press. Under these powers about a third — that is, more than twenty-five thousand each year — of the prisoners brought into the police courts are summarily discharged by these magistrates. The immense influence which the exercise of such powers by bold, unscrupulous party leaders sitting as police justices — urged on by their fellow-leaders and by their boss-in-chief, their feudal lord, — may exert upon politics and the criminal classes in a vast city is almost indescribable.

Such leaders, ignorant of the law, sitting in police courts, are demoralizing spectacles, of which an enlightened city ought to be ashamed. They embolden every criminal, deprive the law of a great part of its terrors, disgust and alarm thoughtful citizens, and degrade the courts themselves in the eyes of the people. The standards of city parties on this subject seem to have sunk below those which prevailed even among the feudal barons of the thirteenth century; for the latter compelled the execrable King John to accept this language of the forty-fifth section of the Magna Charta: "We will not make any justice . . . but of such as know the law of the realm and mean duly to observe it," — language, apparently, which our city-party managers could not be induced to approve. They think it easier to bend mere ignorant politicians to their purposes than to do the same thing with well-educated lawyers who have a wholesome dread of the condemnation of an enlightened profession.

The grossest favoritism, great injustice, and the discharge of many criminals unpunished have been the result of this Tammany justice system. Who can doubt that a large part of the inefficiency and degradation of the police force of New

1895, reached the police bench were mostly party leaders, and hardly of a better class than the Tammany justices. A Republican meat-dealer and politician, ignorant of the law, seems to have been the one most favored — so uniformly does party domination tend to degrade criminal justice.

York, disclosed in 1895, were caused by such police justices? Even an upright policeman might distrust the utility of bringing a criminal minion of the party leader of a district before that leader himself sitting as its police justice,— if, indeed, the policeman would not incur some personal danger by doing so.

VIII

A few more words will not only illustrate another phase of city-party depravity, but will show the fallacy of relying so much as some municipal reformers do upon autocratic mayors as an agency for municipal reform. The appointments of all these ignorant and partisan justices were made by such mayors, who never exposed or even rebuked them, though their power to do so was ample. We know not what election promises were in the way of their discharging such a duty.

It is significant of the purpose of these mayors that, at the date of the latest Tammany appointment of police justices (January, 1893) the term of Justice Kilbreth had just expired — a justice who had been preëminent on the police bench for fidelity, capacity, and legal knowledge. Nevertheless, the mayor, compliant to his party and disregarding an outspoken public opinion and a manifest duty, refused to reappoint this admirable magistrate. But President Cleveland soon made him collector at the port of New York,— so much higher, for the reasons we have stated, is the moral tone of a national party than that of a mere city party.

To the police justiceship thus vacant the Tammany mayor appointed a notorious Tammany leader, who had long been a favorite of the liquor dealers; and, at the same time, he appointed another Tammany leader, who had no superiority for the place, to be a commissioner of the fire department.[1] Thus every lawyer and criminal in New York City were practically told that distinguished non-partisan ability to administer justice was, in the view of the ruling city party and its mayor, of quite inferior importance to being an effec-

[1] *N. Y. Times*, Jan. 5, 1893.

tive party leader who could use official power for mere party advantage.[1]

Thoughtful readers have quite likely been asking themselves why mayors should appoint these justices at all, saying, perhaps, that mayors are not likely to be good judges of judicial qualifications, and that by reason of their election promises mere party-elected mayors have little liberty — and generally not much inclination — to look beyond the selfish interests of their party and the need of winning votes for themselves. There is much truth in this view of the matter, and we shall, in a more appropriate place, present a plan for the selection of these justices by the judges of the higher courts.[2]

[1] Mr. Strong, the next mayor of New York, was elected by a combination of adherents of different parties brought together by the power of the reform sentiment on a platform which declared that city administration should be conducted according to non-partisan business methods. He appointed a superior class of police justices, among whom were adherents of different parties, and all of whom were experienced lawyers. A great improvement in the police courts has been one of the results.

[2] See Ch. XVII.

CHAPTER VI. — MUNICIPAL GOVERNMENT BY PARTY AS ILLUSTRATED BY THE TAMMANY DEMOCRACY (*concluded*)

Tendency of city-party domination to partisan despotism and servility. Need of counteracting it. Proper sphere of party clubs. Nature and dangerous tendency of Tammany's club system. Number and power of her party clubs. Their doings, aims, and influence. Their military and partisan spirit — doing nothing for the higher ends of city life. Tammany's semi-military display of brute force at conventions: its cost, its ominous purpose and vicious influence. Chicago has adopted Tammany's theory. The peril it portends.

The Tammany boss-in-chief. The boss system a natural product of the city-party system. The boss system a usurpation and a peril, yet a necessity of a city-party spoils system. Relation of boss system to our constitutions and laws. Why no worthy party needs a boss. The necessary qualifications of a boss. His functions. Boss hostile to true Home Rule, and to the usefulness of state and national parties. Tammany continues the worst of city-party practices. Past relations of Tammany to the police force. The bi-partisan police system as suggesting remedies for the evils we have considered. The instructive New York police law of 1857, and what it suggests.

The New York Board of Estimate and Apportionment as a condemnation of the Tammany system, and as suggesting the kind of city council we need. Composition and great significance of this Board.

The unique government of the city of Washington. Its efficiency. What it teaches as to party government, autocratic mayors, and the kind of city councils required.

WE may now turn from the mechanism of city parties to some of their effects and purposes not generally well understood. One of the tendencies of American party politics, especially in large cities, is to more and more impair the essential independence of the individual, and to bring him under a feudal servility to party majorities. It is, therefore, of great importance to counteract this tendency and to suppress to the utmost this tyranny of the majority.

Every statesman, we must think, would be glad to have our young men and women, especially in cities, so instructed as to give them a fair view of both sides of political subjects and party issues before they join any party and thereby become subject to passions and interests which make candid judgments thereafter very difficult. On the other hand, zealous partisans and especially party leaders and bosses

naturally desire to have all the young men they can hope to control brought under the influence of partisan organizations, and committed to partisan theories, before a developed judgment has advanced them beyond the easy domination of mere habit and passion.

Hence, very generally in large cities where politics are most degraded, politicians and party managers have gathered young men — often mere boys and sometimes even girls — into societies and clubs, and have subjected them to a sort of semi-military and feudal discipline in aid of partisan servility and domination. Tammany has been conspicuous for such a policy. Especially is this practice vicious in city affairs, where parties mainly contend not about principles, but about offices, patronage, and spoils. We should naturally expect to find the worst examples of these tendencies in New York City, and we shall not be disappointed.

1. The partisan club system of Tammany which has become a potential force for evil is as unique as it is ominous; though the Republican clubs have gone far in apparent imitation of the Tammany system. Let us not be misunderstood. Clubs as well as other societies for patriotic endeavor, for social intercourse, for the discussion of principles, and for promoting the discharge of public duties are both legitimate and useful, and not the less so when they have no party tests, but tests of character, for membership.[1]

So a political party may properly form clubs for the discussion of its principles and for their dissemination by legitimate methods. But when a city party or faction like Tammany, having no fixed principles and tolerating no criticism of its managers or methods, forms clubs for the purpose of increasing its autocratic power and of drawing voters into servile obedience to its leaders, the case is very different and the consequences are inevitably perni-

[1] The City Club and the Good Government Clubs of the city of New York, the Municipal League of Philadelphia, and the Civic Federation of Chicago are conspicuous examples of many similar organizations.

cious. This club system is an effort to utilize both partisan and social forces for party purposes. The philosophical expounder of Tammany's theory, whom we have quoted, tells us that "the social development of Tammany, latterly, has been very decidedly increased."[1]

Tammany makes each of the assembly districts of the city a centre, or feudal domain, for a Tammany club, of which the district leader is the local boss. Each of these assembly districts — to use the words of the official exposition of its affairs — is not only "a regular headquarters of the district committee, which is always open," "but in nearly all the districts there is, in addition, . . . a club-house," "and many of these club-houses have been especially erected for the purpose, and are fitted up with all the comforts and conveniences of modern club-houses."[2]

Some of these club buildings are said to be "exceedingly comfortable and elegant, with bowling-alleys, billiards, card and smoking rooms, cafés, and all the usual accommodations, furnished at a very low rate of dues." Here the meetings of the general committee of the assembly district are held.

The work just cited says the members of these clubs "talk nothing if not politics," and after referring "to the 'dances, balls, picnics, excursions, and outings of all sorts' under Tammany direction, as being "almost invariably successful," its author expresses the opinion that the social influence thus aroused is a valuable help in the way "of strengthening the political power of Tammany Hall."[3] He makes it plain that there is a peculiar kind of Tammany proselytism promoted by these clubs, which young men and boys who hope to be Tammany officers and laborers know how to make useful to themselves. Even the shiftless fellows who wish to be remembered when Tammany distributes coal and other articles to the poor at the city's expense are pretty sure to swell the ranks of the shouting party processions in which these clubs take the lead. Every man who seeks favors under Tammany government naturally

[1] *Politics in a Democracy*, p. 73. [2] *Tammany Hall*, pp. 63, 64.
[3] *Pol. in a Dem.*, p. 73.

sends his children, — if not money or refreshments, — to insure the success of the club dances, picnics, and outings.

Neither Tammany's exposition of itself nor the writer last cited tells us how the great sums of money — apparently several millions of dollars — have been obtained which have made it possible to purchase, furnish, and adorn these club-houses — probably over thirty in all — and to open them "at a low rate of dues," to Tammany supporters. But the masters of a vast metropolis who can sell nominations and levy assessments at rates fixed by themselves — and who are in friendly relations with the powerful Republican leaders of the legislature — can hardly be much embarrassed by a mere matter of money for such a purpose. Every speculator in party favors, knowing that club influence may give him a valuable city contract or prevent his bad work being faithfully inspected, will certainly contribute liberally to the Tammany club of his assembly district.

2. Though no methods of improved city government or lessons in the duties of citizenship may be taught in these clubs, they are far from being idle. Angry managers of local factions gather in them to have their quarrels adjusted by the leader or boss of the assembly district who presides there; to them the election district "captains, lieutenants, and aides" go to make reports to the leader as to how patronage may be most effectively used, and how party opponents may be easiest cajoled, bribed, or frightened. At these meetings it is decided what licenses and permits should be granted or revoked, in what cases policemen should be severe or lenient toward pawnbrokers, grog-shop keepers, bawdy-house keepers, and gamblers, and who should be allowed to keep a dance hall, put up a barber pole, or continue a street obstruction.

In these clubs also are considered what offenders should be discharged, or severely punished, by the police justices, — justices who are perhaps themselves presidents of the clubs, — and what amount of Tammany money and patronage should be used to defeat an independent candidate.

3. It is obvious that if this Tammany club system is useful and without danger, it is desirable that every city

party should build great partisan club-houses in all the assembly districts, and there gather, organize under party leaders, and discipline and drill according to military rules, all the children of the districts — thus beginning to develop and teach much earlier in life and much more effectively than ever before all the theories and methods of partisan warfare in cities.

The theory on which these clubs are based helps us to comprehend the whole city-party system. Just as the captains, lieutenants, and aides go to the club-houses to do fealty to the district leaders who preside there, — as feudal lords or bosses of the assembly district, — these leaders go to Tammany Hall itself to do fealty to the boss-in-chief, who there rules directly. It is a system which everywhere increases partisan despotism and servility, and everywhere impairs personal independence. It brings all bosses and leaders — even those of different parties — into sympathetic relations, and makes conspiracies between them both easy and natural.

4. Politicians and partisans who think that the great purpose of parties is to enforce a vigorous discipline, to increase the party vote, and to suppress all independent action, will see nothing objectionable in this club system — toward which all city-party action is tending. But thoughtful citizens who comprehend the evils of an excessive and despotic party spirit and discipline will see with anxiety a development which brings party divisions and demoralizing party influence into the amusements of social life, and teaches the children of both sexes, in their dances and at their picnics, that their enjoyment has been made possible by the favor of a great party. Tammany has counted the cost of this seductive way of making converts and vassals, and has found it profitable. It helps explain the mystery of its vast power.[1] It was shown in the investigation of 1895 that these clubs

[1] Since the so-called "Greater New York" was created in 1897, Tammany has been industriously weaving the network of its clubs over all the territory added to the former city. The ominous enlargement of the power of the central Tammany club of the metropolis since the election of that year has arrested general attention.

were much frequented by New York City policemen, and with such demoralizing consequences that even Tammany police commissioners were forced by public opinion to formally condemn the practice.

5. If the time shall ever come in our great cities when from the partisan clubs of the hostile parties, in all the assembly districts, semi-military processions shall go forth to great party meetings and picnics, — the paraders shouting for their respective leaders, and singing their exciting party songs, — we shall have more reasons than now for studying the admonishing club history of the Roman and Italian republics, in which their club processions appear as hostile bands ready for deeds of blood. Processions from these Tammany clubs already march under their club flags to the sound of partisan and martial music.

6. The reader has, perhaps, been comparing the doings of these clubs with the manifold activities of the churches, schools, and colleges — of the innumerable societies for charity, benevolence, and patriotic endeavor — which are, with the noble minds who lead them, the potential forces for the moral elevation and glory of enlightened cities. These clubs have, apparently, no share in these great efforts and agencies for civilization, righteousness, and self-sacrifice. Acting on the low plane of selfishness, ambition, and party spirit, they seem to require, on the part of their adherents, no self-denial, no non-partisan or altruistic efforts for the general welfare. A thoughtful citizen can hardly ponder these facts of our municipal life without painful reflections — especially in view of the increasing divergence in our cities between the forces which are political and those which are educational, moral, and religious.

II

1. The same aggressive spirit which has caused the managers of Tammany to appropriate social forces by means of clubs has also caused them to display great bodies of their followers at state and national conventions with an obvious purpose

of demonstrating their brute power, and influencing these bodies. This novel display, which has hardly yet arrested public attention, may be the first exhibition of a new municipal force which may, within a generation, become very potential in American politics. We have seen that the constitutional convention of New York, in 1894, felt the need of guarding the state against city domination, and a New York law of 1896 provides for a city which, within the present generation, may contain a majority of the voters of the state — may even now, by making common cause with one other large city, make and repeal laws at pleasure.[1]

How is this city-party domination likely to be used? Mr. Ivins gives an estimate to the effect that Tammany spent about fifty thousand dollars on its representation to the Chicago National Convention of 1884, where it made an ostentatious display of mere physical force — perhaps the first instance of the kind.[2] At the last inauguration of President Cleveland — to whose party theories those of Tammany were in broad contrast, yet from whom its managers doubtless hoped for patronage — it was represented, at enormous cost, by several thousands of its partisans — there having been eight railroad trains filled with them, under the lead of her boss, her sachems, the mayor of New York, several of the police justices of the city, and others of its partisan officials.[3] These thousands of her brawny champions were ostentatiously paraded, in semi-military array, upon the streets of the national capital — an exhibition of half-civilized party spirit and menacing purpose quite in harmony with the recent semi-official, Tammany publication to which we have referred.[4] It was a spectacle to make a patriot not

[1] See further on this subject, Ch. XVIII.

[2] *Mach. Pol.*, p. 62.

[3] *N. Y. Times*, March 2, 1893.

[4] *Tammany Hall.* This publication, with a tiger rampant on its frontispiece, commends to Tammany for imitation the qualities of the tiger, the wolf, the bear, and the fox; and it republishes an article, which appeared over the name of the present boss of Tammany, in the *North American Review*, in which politics is declared to be war, and the success of the Jacobin Club is held up for an admiration only inferior to that due to the "Tammany Democracy," which is declared "to have no equal in political affairs the world over." *Tammany Hall*, pp. 24–28, 66, 67.

only ashamed, but anxious for his country. In describing the violent and corrupt days of Rome before Cæsar became emperor, Mommsen pictures scenes of partisan violence and passion which seem far less incredible after such a spectacle at Washington.

2. In October, 1893, the New York City journals contained accounts of railroad trains carrying fourteen parlor-car loads of men of Tammany to a New York state convention at Albany. This Tammany delegation was under the general charge of the mayor of New York, but in divisions headed by the sheriff, excise commissioners, fire commissioners, police justices, civil justices, and other city officials — altogether a striking illustration of the city-party theory of municipal government. It hardly need be said that it would have been far more creditable to the city of New York and to each of these officers had the latter kept away from the convention, but we can foresee from their conduct what is likely to happen under city-party domination when our cities shall have become much larger.[1]

The evidence thus exhibited of an overflowing party treasury, which the reader may think could never have been filled from the legitimate earnings of city officers or otherwise than by the means we have indicated, is but the smallest part of the ominous significance of this brutal display of city-party power.[2] Who can be certain that, in no remote future, if the city-party system shall prevail, the delegates from a few great cities, combining their numbers and vast financial resources, will not be able to dictate the nominations of both governors and presidents? If the Tam-

[1] New and admonishing developments of the (city) party system are now occurring since the text was written. In November, 1897, a few days before the mayoralty election in New York City, nearly three hundred of the members of a city party of Chicago, — quite in the spirit of Tammany, — with the mayor of Chicago at their head, made an ostentatious journey, in semi-military array, to New York, in aid of carrying the election of Tammany's candidate for mayor. Some of the New York journals suggested that the hotels regarded some of these strange people as quite undesirable guests. Who can tell what such precedents for influencing elections may lead to? Tammany may three years hence send a thousand of its bruisers to help elect a mayor of Chicago, or five thousand to influence a convention for nominating a president.

[2] See Ch. XVIII. as to Tammany's abundant funds.

many method is followed, regiments of the regular army may be required to keep the peace during the sessions of a national convention.

III

1. The city boss-in-chief is the most developed and characteristic production of our city-party system, and without understanding him the system cannot be comprehended. A party may legitimately have a leader to expound its principles and to advise as to its policy, but not the semi-military despot or the patronage-mongering autocrat which is called a boss. It needs little argument to show that a despotic, semi-military party system, unrecognized by the laws, and which provides for many separate jurisdictions and local commanders, makes a despotic commander-in-chief essential both for harmony and for vigor. A system which is at once despotic, military, and mercenary must have a despotic chief and self-executing methods; for it cannot rely upon appeals to the courts, to reason, or to justice, — it being unknown alike to the constitution, to the laws, and to the judges.

We hear much of a superficial, delusive theory to the effect that the great source of our municipal evils is the boss himself, as if the carbuncle and the cancer were the cause of the bad blood which has produced them. The Tammany system or any unrestrained party system enforced in city affairs will, as we have seen, from its very nature produce an endless series of bosses. The boss system is an excrescence upon our constitutional system, which, like all excrescences, springs from diseased conditions, and perversions of natural forces. The boss system and the city-party system can exist only when parties have transcended their sphere and become despotic and mercenary — only when the individual, as a consequence, has lost much of his true independence and has become servile to parties and their managers. The power which makes the boss a potential force is the measure of the independence and liberty which

the citizen has lost by becoming a party vassal. To restore that liberty and independence is the only remedy for the boss.

The despotism administered by the boss does not spring from himself but from the spirit and methods of the party which created him. No American constitution, no useful law or sound municipal principle, no needs — arising outside the circles of party despotism — require or allow a boss of any kind. He has no legitimate or useful functions. He is as undesirable as a shark in a fish-pond or a feudal lord in an assembly of freemen. Few opinions are so superficial as that which assumes that to merely overthrow a boss will suppress the false theories and methods which have produced him. The members of every party and faction, if not blinded by party spirit, would see, in the disgraceful and corrupt doings of the boss they tolerate, evils for which they are individually responsible. The boss is no worse than the majority of his supporters make him. To suppress the boss system we must suppress the false and partisan spirit and theories from which it grows.

2. A boss, either state or municipal, can rightfully have no sanction in the laws or the ordinances, no place under the administration, no recognition in the halls of legislation or in the courts of justice. He has, in fact, no legal existence. Both government and society are complete without him. He has no authority which it is not a discredit alike to a party, to a city, and to a state to recognize. No court could without disgrace treat him as the lawful holder of the power which he prostitutes or of the money which he extorts — or which bad citizens put in his hands — for influencing legislators or carrying elections.

When a party has thus come under a feudal discipline and a spoils system, outside the laws and the constitution, it has created a necessity for managing its own affairs by self-executing methods of its own creation which the government and the laws cannot recognize. There is no resource left but the creation of an extra-legal, secret, despotic, executive boss to administer the new system — the motive forces

of which are party spirit and selfish hopes and fears. The boss system, in other words, is self-executing, propelled by the selfish and partisan forces of human nature. It is both a conspiracy against the constitution and a defiance of the laws and the courts.[1]

3. The fact that a city party will make a boss out of such men as it would not venture to nominate for mayor — none of the bosses of New York City having ever been made a candidate for the mayoralty — is highly significant. He can only be a leader in a sphere outside the government and the laws — from which he wages war upon them. No boss ever stands as the representative of the principles of his party; no party faithful to its principles ever needs or tolerates a boss. The boss is the natural and inveterate enemy of civil service reform, ballot reform, corrupt practice reform, nomination reform — in short, of all reforms which would establish the independence of the voters; for their triumph would be his suppression.

4. Politicians and party zealots are willing to support the despotism of the boss because through him they expect to monopolize the offices and spoils, and get their share of them. They are lured to his support by the chances — of the gambler and the lottery ticket holder — of winning the large prizes of party victory through his favor. A hundred politicians and office seekers, little and great, may be held in leash by a boss through the hope of gaining a single office or contract, which has been dangled alluringly before the eyes of all of them. To offend the boss imperils every vassal's chances of spoils, or an election.

According to the boss system, the patronage, offices, and spoils which a party controls are regarded as a common fund, — belonging to its regular adherents in good standing with the boss — of which he is administrator, with ample powers for awarding it — especially in the way of aiding or defeating office seekers and legislation. They fawn before him, for their fate depends upon his favor. The will of the

[1] It was not without peculiar fitness that the last boss of Tammany (1894) was made chairman of its committee of finance.

boss may defeat the just claims of the noblest citizens — one of whom was lately refused a seat in the Senate from New York; or may make an unknown person governor — as New York has recently learned.

5. The essential qualities of a boss-in-chief are obvious. He must be a man of strong will, of courage, of quick observation, a firm disciplinarian, a good judge of partisan and selfish forces, and of all the motives of criminal life. He needs to be an expert in the nature of politicians, and in the arts of partisan manipulation. He must have — or be thought to have — enough of that kind of honesty, which even gamblers need, to induce politicians, office-seekers, and unscrupulous rich men to put faith in his promises, and to trust him with money for unlawful purposes; and yet skill and audacity enough in the arts of secrecy and deception to prevent his use of it being disclosed — even though it debauches officers and bribes legislatures. He must be an intolerant partisan by nature, who thinks — or pretends to think — his party always right and his opponents always wrong. He must have few scruples as to gaining voters and defeating opponents by such methods as we have seen that party leaders and captains employ.[1]

But he needs none of the higher capacities for statesmanship, none of the noble endowments which elevate or adorn political life, no respect for manly independence in politics. He may be, apparently, so regardless of the good opinion of the better part of his fellow-citizens as to be willing to allow charges in the foremost journals, imputing disgraceful, if not criminal, conduct to him to remain unanswered.[2]

6. To be a successful boss it is not essential for a man to have rendered services or to possess qualities which in a social or moral sense give distinction or command respect. He need not be identified with the reputable wealth, the great business interests, the culture, the art, the refinement, the

[1] See Ch. V.

[2] See on these points: *N. Y. Evening Post*, Oct. 5, 1895, and Nov. 23, 1895; *N. Y. Times*, Nov. 4, 1895; *Harper's Weekly*, Dec. 23, 1893, and May 13 and 23, 1894; *N. Y. Tribune*, Dec. 7, 1895.

commerce, the philanthropy, the churches, or the charities of the state or the city of which he may be the political tyrant. He may, indeed, be distinguished for very different qualities and relations too well known to need mention here.

7. The duties of the boss-in-chief are easily stated. He is the chief engineer for working the machine, the chief manager for carrying elections, the chief spoilsman for operating the spoils system, the chief purveyor and patronage mongerer for apportioning moneys, offices, and spoils which his party has won. He settles the contentions about the assignment of patronage to districts. He receives and uses the money which unscrupulous men and corporations may intrust to him for having the power of his party used to defeat the bills they dislike, and to pass those they favor. He can easily use it in a way to aid the members of his party who are most subservient to himself, thus greatly increasing his own power. This being done secretly and without liability to account, allows little mystery as to how a boss may soon become rich and powerful. The chief boss should fix the price for a nomination to a judgeship and for defeating or passing a bill before the legislature, — these matters being too large for the bosses of the assembly districts, — but he has no function for upholding the public interests as paramount to party gain, and it is contrary to the boss system that he should do so. It is natural that a boss should hate an independent or non-partisan much more than he hates a party opponent.

8. If parties would confine themselves to their legitimate objects, — the dissemination of their principles, and the giving of an effective expression to the wishes of those who freely accept them, — there would be no boss and nothing for a boss to do. The election districts and the cities would be able to freely choose fit representatives, and there would be no coercion from beyond them. But boss-led parties will not do this — the boss system requiring universal domination from the centre to the borders. The largest jurisdictions use their party power, under the lead of the boss, to coerce

the votes of the residents of the smaller districts, — depriving them of free representation. The state boss uses his power to coerce county and town elections; the city boss uses his power to coerce city elections in all the wards and districts. Everywhere the boss and party are represented, so that rarely can the individual vote freely. The great Home Rule policy of the state constitutions — intending free representation for every locality having a right of election — is defeated by the centralized power of the party exerted by the boss wherever local sentiment seeks true representation. The boss system is a central despotism. Hence arises the possibility of legislative bodies in which nearly all the members adhering to a party are of the same servile kind. They are ready to obey the orders of the boss as soldiers obey their general or feudal vassals their lord.

9. It is one of the worst results of the boss system — which facilitates secret corruption, as well as despotism — that it causes unscrupulous men and corporations to think it cheaper to buy their safety and advantage than to contend like men for their rights, and therefore to regard it as a good investment to put money in the hands of the boss. They practically say to him: "Take this money and use the party power to defeat the bills we oppose and to pass those we favor. Let us both keep our secrets." No receipt is given, no account is to be rendered, no investigation is feared. Is it strange that this boss business is profitable? Should we be surprised that bosses of different parties, having a common interest in a vicious business, conspire together? Is it strange that they dictate nominations and control elections? Is it a wonder that towns and districts do not have free elections? The late millionnaire, Jay Gould, gave money to the bosses of both parties, obviously for his own advantage. Not without a specious justice, he insisted that as both of them attempted to extort money from him, he had a right, in self-defence, to make the best terms he could — as he would with brigands and the captains of pirate ships.

IV

Before proposing some formal remedies for the evils considered, it may be useful to refer to certain remedial measures which not only further illustrate the Tammany city-party system, but which have been so successful as to suggest the direction in which further relief is to be sought and some of the methods through which it can be easiest secured.

When national and state parties had got control of city governments, they speedily began to disregard the facts that these governments had been created and should be managed to promote local interests. The parties treated them as if they existed to secure party majorities in national and state elections, applying party tests, even to the choice of policemen, and requiring these officers to be active party electioneerers — as Tammany still does.

We have seen that no truths can be plainer than these: that a policeman should have a stable tenure, that he should not be a politician, that he should treat alike the adherents of all parties and of no party, and that he should neither do nor omit any act for the purpose of aiding or injuring any party. The disregard of these truths by Tammany and the city-party system, prior to 1857, had caused the policemen of New York City to be partisan and corrupt; to be servile to the mayor, tending to make him an autocrat; to be a potent and intolerable party force for carrying elections. This system greatly impaired the independence of the voters and increased the despotism of the party majority. The mayor — Fernando Wood — dominated the police force at that time and was fast becoming both a municipal autocrat and a party boss. The great body of the citizens, in 1857, were as blind to the inevitable and intolerable results of the city-party system as the most besotted adherents of the Tammany faction now are.

The time had not then arrived when any considerable number of voters could see that to take the police service

out of partisan politics, it must, like the military and naval service, be placed under a real non-partisan command. Men who could see the absurdity of selecting a mere party leader for commander of the army or navy could see no absurdity in selecting several pairs of such leaders to command the police force of the city. When party men first begin to see that a police force under the control of a single party is sure to become oppressive and corrupt, they do not at once adopt the true and logical action, by placing it under non-partisan control — party spirit and blinding party interests having perverted both their vision and their judgment. By some strange jugglery of reasoning, they place two or more pairs of partisans in control, though claiming all the time that no two of them on the same side can be trusted.

Yet, inadequate and indefensible as the bi-partisan system is, it is probably better than control of the police by a single partisan. That system materially restrains the autocratic power of a party-elected mayor, upon which Tammany insists. New York public opinion had become, in 1857, only enlightened enough to try the bi-partisan system, which is really an intermediate stage between party and mayoralty despotism on one hand, and non-partisan justice on the other.

Yet this law of 1857, which first adopted this system, was so original in other respects as to deserve some attention here.[1] It created a police district made up mainly of the cities of New York and Brooklyn, for which a commission of five was appointed by the governor and confirmed by the Senate. The mayors of these cities were to be *ex officio* members of the commission, whose other members were to be so classified that each was to hold office for three years. The governor could remove a commissioner for cause after a hearing. No policeman could be removed save on written charges, and after an opportunity of being heard in his defence. Sergeants of police must be selected from among the policemen, and police inspectors from among the sergeants. The police superintendent was to be selected by

[1] Laws, 1857, Ch. 569.

the commission, and was to supersede the mayors of these cities, respectively, as being the executive head of the police force.

This law was, we think, the first of the kind in this country, and it marks an important advance toward a non-partisan city administration. It made it impossible for the city-party majority to control the police force, and for a mayor to use it to carry city elections; it gave the policemen a more reasonable stability of tenure, and a right of trial on charges before they could be removed; it, in substance, declared that policemen are state officers, and that the state may insist on their good government. These were original and salutary achievements in this country, and clearly suggest the direction of municipal reforms in the future.[1] Police administration under this law was very greatly improved, and it continued to be much the best in any American city down to 1870, when the Tammany faction triumphed. Other departments of the New York City government were soon placed under analogous commissions which still (1896) continue with like advantage. These precedents soon resulted in commissions being provided for many cities in New York and other states. The reforms thus secured were not due to any mayor, or to any city-party majority; nor were they gained by setting the state at defiance or asserting any absolute power of Home Rule.

Government by commissioners had so vindicated its superiority to the old party system with autocratic mayors, that when the Tammany faction triumphed in 1870, it did not venture to supersede commissions, but it gave the power of appointing and removing the commissions to the mayors. This largely restored the autocratic authority of these officers and party-majority control over the police and other city departments.

Having thus made half the advance from party domina-

[1] This law did not in terms provide for adherents of both parties having places on the commission, but by classifying its members, and placing the mayors of New York and Brooklyn among them, the result was practically the creation of a sort of bi-partisan commission.

tion and an autocratic mayoralty toward free and non-partisan city government, a clear view of this amount of progress will help us much in completing the journey. We cannot continue under bi-partisan commissions. We cannot expect any help from a mere city-party majority. There is no reason for thinking that a mere party-elected mayor will be potential for reform. We must count on public opinion and the most patriotic adherents of both parties, and not on party opinion; and we must maintain our just constitutional relations with the state.[1]

V

1. Another example of the bad results of party rule, an autocratic mayoralty, and the creation of a partisan city council as a remedy, deserves notice here. Before 1873 the action of the party-elected mayor, aldermen, and assistant aldermen of New York City had become as intolerable as the administration of the departments had been prior to 1857. For relief a law was enacted in the former year, which, after abolishing the assistant aldermen, deprived the aldermen of substantially all their powers both as to the imposition and expenditure of taxes. It conferred the taxing power, so far as allowed to the city, and the control of expenditures upon a board, or commission, designated the Board of Estimate and Apportionment, which has since exercised them with beneficial results — powers under which more than forty millions of dollars have been annually raised and expended. This board fixes not only the aggregate expenditure, so far as not fixed by law, but the amounts which may be expended by each department and branch of the city government, without there being any power of changing these amounts by the Board of Aldermen or other city authority. By this law most of the local authority for government, not already given to the commissioners, was taken from the legislative department

[1] *Mun. Prob.*, Ch. II. and X., where Professor Goodnow has treated this subject very instructively.

and the mayor, and was conferred upon a body most of whose members were to be chosen for service in other departments. It was a great municipal revolution.[1]

This Board of Estimate and Apportionment is composed of four city officials besides the mayor, no one of them being elected or appointed directly to its membership, — the members being the mayor, who is elected for two years, the comptroller, who is elected for three years, the president of the Board of Aldermen, who is elected for two years, the president of the department of taxes and assessments, who is appointed for six years, and the corporation counsel, who is appointed for four years. It will be observed that the two of these members who have the longest terms are appointed officers.[2]

2. It is plain that, inasmuch as the elected members of the New York board are chosen at different times, and for different terms, and the appointed members hold their places for long yet unequal terms, they are likely to be adherents of different parties, and are at least quite sure to represent diverse phases of city-party and public opinion. Adherents of different parties have been and now are (November, 1897) members of the New York City Board — thus really giving some measure of minority representation in both the legislative and the executive departments. This law in large measure suppresses the mayor's veto power, and condemns and defeats the autocratic mayoralty theory. For as to financial matters, the mayor's vote is only that of one out of five. The dominant party-majority of the hour cannot longer absolutely control the administration. It is obvious that these boards are in the nature of a continuous, non-

[1] Mr. Conkling says the only important power remaining to the aldermen "is to regulate the use of streets, highways, roads, and public places." *City Govt.*, pp. 39 and 47.

[2] N. Y. Laws, 1873, Ch. 335, Sec. 112; N. Y. Consol. Act, 90. The corporation counsel was made a member of the Board in 1893. N. Y. Laws, 1893, Ch. 106. Increased significance is given to these revolutionary changes by the fact that the charter of Brooklyn, enacted after fifteen years' trial of this new system in New York City, has pretty closely reproduced it for Brooklyn. The city of Detroit, and, we believe, several other cities, have followed these precedents.

partisan city council, of which they suggest the utility, and into which they might be in large measure developed.[1]

They bring much more stability and experience into the management of city affairs than was possible under the former system, and create some independence of mere party dictation. They make it possible to pursue a steadier and more consistent policy than can be attained under the old or the latest party system. In fact, the whole policy established by such boards of Estimate and Apportionment is as utterly opposed to the theory according to which some municipal reformers are now insisting that mayors shall be autocrats, as they are to the old system of strict party rule.

They have unquestionably caused much improvement in city administration, and hardly any other part of the governments of the cities of New York or Brooklyn has been so satisfactory, or so far independent of partisan and boss dictation. No serious scandal has stained the records of these boards, and no part of the city government has commanded a larger measure of public respect.

It is worthy of notice that it would be only necessary to confer upon these boards the city ordinance-making power — now distributed among various commissions and the aldermen in New York — to constitute them a body whose action could readily supply a large part of the need which now exists for very frequent appeals to the legislatures for special laws. They could not be made adequate as councils, yet they might be highly useful in the intermediate stage in passing from party government to the creation of such councils, and they supply valuable suggestions as to proper composition of such bodies.

VI

1. The District of Columbia and the city of Washington — for which Congress under the Constitution makes the laws much as the state makes them for other cities — has a very

[1] Such was the condition when the Greater New York charter was adopted.

unique lesson for us concerning party and mayoralty government. Congress had many years ago provided for having a mayor and city council in two branches for Washington, and an executive organization according to the prevailing party theory. City-party government prevailed up to 1871, but it became so corrupt and intolerable that Congress imposed upon it various restraints. Still disgraceful and intolerable abuses continued. In 1874 and 1876 Congress[1] abolished the whole party and mayoralty structure, and provided a new municipal system which abolished all voting as to city affairs. Since this new system went into operation no one has voted for any municipal officer in Washington; it has had no mayor; there have been no local, party contests for capturing its government or creating municipal virtue.

The law of 1878 provided for the appointment by the President of three commissioners to whom the municipal government of the city of Washington, and the selection and removal of nearly all its officials, were intrusted. Two of the commissioners were made appointive from civil life and for terms of three years; and the other was to be selected from time to time from among the members of the corps of engineers of the United States Army — whose members, we may say, are neither politicians nor partisans. They are of the class of men who should be placed at the head of our city police and boards of public works. The engineer commissioner, who has no fixed term of office, is, under the commission, practically superintendent of the department of public works. The two other commissioners are not, in practice, selected from the same party. The commission — save as subject to the power of Congress over taxation and expenses — has much the same powers which would belong to a council in New York City which should possess the combined authority of its Board of Estimate and Apportionment and of all of the city commissions.

Here, therefore, is a city government substantially non-partisan. It not only discards the whole theory of an

[1] Laws, 1874, Ch. 337, and Laws, 1878, Ch. 180.

autocratic mayoralty and the delusion of "holding the mayor responsible," but it has no mayor whatever. There are no elections for getting municipal patriotism and wisdom out of partisan contests over city offices, no assembly districts or party leaders, no city party, no primaries, no bosses, only able administrators who become familiar with their duties and feel responsibility to public opinion.

2. Nevertheless, the city of Washington, under this new system, has had the most economical, efficient, and respectable government of any city in the United States. There have been under it no great scandals or frauds and only very small abuses of the Tammany or city-party kind. The sanitary administration of Washington has been excellent, its police force has not been guilty of corruption, its clean, smooth, and well-shaded and paved streets have been generally admired.[1]

This example of good local government is all the more interesting, and the problem solved has been all the more difficult, because the local power to some extent embraces the jurisdiction of a state as well as that of a city. The people of Washington seem to appreciate the advantages of their form of government and to be satisfied with it. A recent writer, speaking of it, says, "The commissioners are more sensitive to public opinion than an elected executive. An informal vote, lately taken, has shown that only a minute fraction of the people favored the introduction of suffrage." Citizens' associations exist on a large scale, and seem to make public opinion an effective power for good government.[2]

Though we should not attempt the suppression of local voting for municipal officers within the states, yet the example of Washington may well set us upon revising some of our most confident municipal theories. When the question arises as to whether city-party contests tend to good city government, Washington gives us no uncertain answer. When the question shall arise whether a mayor elected by

[1] There are still in Washington a very few local officers whom the President appoints and removes sometimes — to his discredit — apparently for party reasons.

[2] *Political Science Quarterly*, September, 1897, pp. 414, 419.

popular vote and having autocratic powers is an essential condition of such government, the answer which Washington gives would seem to be unmistakable. And we shall soon find that the republican city of Paris has no mayor, that all the enlightened, well-governed cities of Europe are not only without mayors elected by the people, but are without any sort of party government whatever.

3. We hope our readers will be prepared for some suggestions for municipal reform, based in part on the experience we have now cited, which seems to call for important revisions of several conventional methods and theories which have not apparently been well considered.

There seems to be a manifest need of a central, legislative, non-partisan body in cities, — some kind of a city council, of which the Board of Estimate and Apportionment in New York, the commissions in many cities, and the unique government of Washington are the suggestion and prophecy, a council having general powers for making all city ordinances, for bringing the whole municipal government into harmony, and for abolishing needless appeals to the legislature for special laws. This council must represent not mere parties, or party opinion, but public opinion, and the whole mass of citizens and municipal interests. Its proper constitution is the greatest problem of city government.[1]

[1] An adequate presentation of the results of party government under Tammany would contain some account of the grave abuses which have existed in the offices of constables, coroners, county clerks, sheriffs, civil justices, school boards, and boards of public works; but we have no space for further details, and must leave these matters to the imagination of the reader, aided by some incidental illustrations as we proceed. Very likely the reader may regard it as an important omission that we have not mentioned the neglect of many intelligent citizens to take part in the city primaries, and to vote at many of the elections, as being a great cause of bad city government. This matter — far more significant and profound than it is generally thought to be — will receive attention in a more appropriate place. See Ch. X.

CHAPTER VII. — SEVERAL VICIOUS CONDITIONS AND PRACTICES CONSIDERED AND REMEDIES FOR THEM PROPOSED. THE MERIT — OR CIVIL SERVICE REFORM — SYSTEM

Individuals and parties compared as sources of municipal evils. The ultimate powers which make for municipal reform. How party spirit and interests divide the true friends of good city government. The coöperation of these friends essential and a duty. The coercion of city laborers a potential and degrading party force. An easy remedy for this coercion explained.

The prostitution of municipal authority for party ends a great evil. Party tests for city offices indefensible. The methods of civil service reform as a remedy. This reform and its practical results explained. Why called the "merit system." The promotion of the most worthy a duty. Removals for party advantage unjustifiable. The merit system will make true Home Rule much easier. City servants should not be active in party politics. The origin and progress of civil service reform. Removals for party advantage should be a criminal offence. The proper tenure and official term for municipal officers. Most of their terms far too short. Elections in which no principles are involved are demoralizing. Examples of too short terms and too many elected officers in cities and villages. Electing jurymen. The larger the city the longer should be the terms of its officers. The army and navy and the federal judiciary illustrate the advantage of long terms. The Brooklyn charter of 1888 as illustrating the policy commended in this chapter and the evils of city-party government.

1. THE reader is reminded that we are not to consider so much the ultimate influences — educational, moral, or religious — which bear upon this subject, as those which spring from false theories and methods and from vicious organizations. While to elevate the standard of morality and intelligence must always be the ultimate purpose, it is plainly a matter of vast importance to determine by what means we can secure the best government possible from the virtue and intelligence which now exist among the people. We believe that much better municipal administration than that which now prevails is possible even within this decade.

That a large proportion of the evils in our city affairs spring from ignorance, selfishness, and corruption on the part of individuals, for which parties and false theories and methods are not responsible, no candid man can deny. Much

of the bribery which exists should be charged directly upon individuals — in very large measure upon the so-called respectable classes or the corporations which they control.[1]

Nevertheless, the bribery and corruption in city government which originates in the private action of individuals is small compared with that which springs from the doings of parties and factions, and finds justification in an excessive party spirit.[2]

2. Yet there is, beyond the special sphere of our discussion, a broad field for instruction and for patriotic and altruistic endeavor in which the teacher, the ministers of religion, and all organizations for municipal reform have a high function and duty. It is for them to present lofty ideals, to arouse the sense of civic pride and duty, to elevate the municipal standards of the people and impel them by irresistible moral and religious forces to the better discharge of their obligations to themselves and their country. It would be no small gain to make it as discreditable for our young men — whose college studies have perhaps extended to the governments of Greece, Rome, and Germany — to have no sound and definite views as to what are the proper relations between parties and municipal governments, or as to the best means of improving the latter, as it is for our rich social leaders to take no part in municipal administration, while surrendering themselves to ostentatious and demoralizing social display — when our cities are the worst governed amongst those of the enlightened nations.

I

We have called attention to the important fact that, at the outset of all attempts to unite the natural friends of good mu-

[1] The mayor of Chicago in a recent speech to leading citizens is reported to have used these words : " Who bribes the Common Council? It is not men in the common walks of life. It is men in your own walks of life. . . . Who is responsible for the condition of affairs in the city of Chicago? Your representative business men. If an assessor grows rich in office, with whom does he divide? Not with the common people . . . but with the man who tempted him to make a low assessment." *N. Y. Evening Post*, Dec. 30, 1895.

[2] See Chs. III., IV., and V.

nicipal government, we find them separated into hostile party camps and made distrustful of each other by irrelevant party issues, prejudices, and rivalries. Yet, so profoundly important is this fact — directly in the way of all arguments as to remedies — that we must add a few more words concerning it. The party interests and distrusts arising out of issues external to municipal affairs make it very difficult even for candid party men — and impossible for partisans — to coöperate in any municipal policy, or to take a just view either of city interests or of their own obligations.

They can hardly comprehend the fundamental fact that a city or a village has no valid claim to a separate government except to enable it to govern in reference to its own needs and interests. Naturally enough, therefore, they habitually sacrifice the welfare of municipalities to the interests and ambitions of state and national parties. Their partisan spirit and ambition involve them in endless contests and intrigues for mere city and village patronage, spoils, and votes to be used in aid of external and irrelevant party elections. By this means both their sense of municipal duty and their conception of the dignity and importance of city affairs become debased. Naturally enough, they fail to see that if city governments and party managers would confine themselves to their proper spheres there would be few conflicts between them — these conflicts springing mainly from invasions by each of the domain of the other.

It is almost too clear for argument that only by a union of the natural friends of good city government, thus unnaturally separated and made hostile toward each other, can such government be established or preserved. For the number in any one political party, which will stand for true city government, is too small to establish it — to carry the city elections — both against its own partisans and all the adherents of the other party. An indispensable condition of municipal reform, therefore, is the union and coöperation, in its behalf, of the worthier voters of both parties — the natural friends of municipal reform — in support of methods of city government upon which they can honorably unite,

while retaining their existing affiliations in national and state parties.

Thus far, nearly every triumph of such reform has been achieved through a temporary union of its party-divided — though natural — friends; and it is plain that to make such reform permanent these friends must permanently stand together. Only by being faithful to city interests can they be victorious. The first essential advance toward such a union is for the citizen himself to subordinate his party passions to his sense of municipal duty. The man incapable of this can have no part in the primal and noblest work of municipal salvation. In other words, the first great victory for such a cause, in which any citizen can take a noble part, must be one achieved within himself — a victory of the patriot over the partisan, of the good citizen over the politician in his own nature, of his sense of duty over his party passions and ambitions.

Upon the intelligent and thoughtful citizens — upon the men best endowed by nature for achieving such a victory over themselves, who, nevertheless, for party reasons refuse to coöperate with each other — must rest the chief responsibility for our municipal future. They can have, and will deserve to have, little better municipal administration until they achieve such a victory over themselves.

2. In the history of half-civilized times, we can read with surprise how men who differed about religion refused to act together for justice or good government. But what shall we say when, under our political system, which tolerates all opinions, men of adverse politics — men who worship in the same churches and coöperate harmoniously on the same boards in all business affairs — yet, in a half-civilized spirit, refuse for mere partisan reasons to make common efforts for good government at their own doors? They unite, irrespective of party, in all sorts of partnerships, and corporations, and in supporting churches, charities, reforms, and amusements, yet they stand in angry, partisan array, despite their plain duty to support non-partisan government, — which would most aid the objects for which they thus jointly labor. A

few leading citizens in a village, and a few hundred such in a great city, — prominent in the different parties and in social life, — could by their united efforts lead to success a movement for the overthrow of party despotism and municipal corruption.

The most intelligent men of a city know better than others that it is of no importance, intrinsically, under a good municipal system, what are the party politics of its mayor, its judges, its justices, its policemen, its clerks, or its laborers — it being enough that they are trustworthy and capable. So long as such men connive in enforcing party tests in the selection of these municipal servants, they are most guilty and do most to degrade city affairs, for they sin most knowingly and disastrously.

II. *Labor Registration*

1. From those who ought to lead patriotically, we turn to citizens standing on the lower plane of municipal service, who suffer most from the lack of such leadership. We have seen in Chapter III. that a very large part of the despotic and corrupt control of elections and administration, which a debased party exercises in a city, is made possible by reason of its ability to employ, promote, and dismiss laborers for the city at pleasure. These city laborers — many thousands in a great city — are bribed and coerced by appeals to their fears and hopes. Every consideration of justice and morality makes it important that employment in the municipal service should be secured by open and fair means, irrespective of political or religious opinions, and that such opinions should have nothing to do with discharges from this service. Every municipal government which fails to protect its own worthy laborers against the partisan piracy and despotism of its politicians is as degrading as it is disgraceful. Probably from five to twenty voters, who seek each of these places in the labor service under the city-party system, have been tempted, if not bribed, to servility by promises of employment on the condition of voting and electioneering for the

ruling party or faction. A constant fear of dismissal tends to make the city laborers active henchmen and electioneerers servile to the boss and the party leaders.

2. Under the party system, which prevailed in New York City and Boston for example, before the methods of civil service reform were introduced, laborers could hardly gain a place in the municipal labor service without the approval or "request" in writing of some party agent or official — a request hardly obtainable save on the payment of a fee, and the surrender of their independence in voting. In some American cities there is reason to think that these scandalous "requests" have been on sale in the labor market. Nor was this all. There seem to be good reasons for believing — as Colonel Waring declared — that the wages of laborers for cities have sometimes been fixed above the market rate, so that the partisan purveyors of these "requests" may be able to sell them to laborers for a good profit.

It would obviously be of immense public advantage so to regulate the employment and discharge of laborers in the municipal service that they can, according to just provisions, secure such employment upon their merits as workmen, regardless of their political or religious opinions. Happily, it has been proved to be easily practicable to do this; but we have no space for explaining the methods in detail. They do not require examinations, but only a registration of applications for employment, and simple regulations which cause every one who seeks it to be fairly treated — to have employment in particular kinds of labor in the order of his application — and to be protected from the interference of party leaders and managers.

If labor places are sought in which ability to read or write, some mechanical skill, or knowledge of arithmetic is essential, there are proper inquiries on these points. Yet, the laborer who can neither read nor write, and who has no influence behind him, may be registered, and will have his chance in due order for any employment for which he is competent. The trial of this system in Boston, where it has been longest enforced, has demonstrated its practical justice

... the laboring classes to be its ... corrupt politicians and party ... inveterate enemies, for it sup- ... power and spoils.[1]

... methods were soon after that date ... admirable results which still continue ... the United States Navy Depart- ... the Secretary of the Navy, Dec. 2. ... naval officer . . . brought into con- ... laborers . . . at our government yards ... chiefly to the immeasurable superiority of ... old system."

... difficulties, without adequate legislation, ... opposition of party leaders and bosses. ... now (1896) being enforced with marked ... of New York and Brooklyn. A tenth ... and exertion given to useless party conten- ... the politics of laborers in these cities would ... registration of laborers highly effective for ... which these contentions do much to ag-

... the labor registration system the most efficient ... laborers naturally rise to the highest places; ... laborer is discharged for indefensible reasons, the ... class resents it, and a party approving it loses votes.

... essential of the system of Labor registration in the United States was ... city of Boston in 1884. Laws Mass., 1884, Ch. 320, Sec. 14. This ... based on the national Civil Service law of 1883, contained an original ... such a system. The highly satisfactory results obtained under it in ... caused the system to be extended to other cities of Massachusetts in ... their own requests. Laborers must be selected in the order of their ... and the reasons for their dismissal must be stated in writing.

[1] By a law enacted in 1895 the state of Illinois provided for the enforcement of a labor registration system in any city which by popular vote should adopt the law. The city of Chicago has adopted it, and is now (1897) successfully enforcing the system with every promise of continuing usefulness—though the law contains some quite radical provisions to be enforced in the outset. This law (Sec. 22) wisely prohibits the demand of a party assessment from a city laborer, and also the payment of any by such laborer, for any party or political purpose. Such payments are often only bribes for avoiding a deserved discharge from employment.

There is, in fact, very little inducement to discharge a laborer for party reasons, for the next man upon the registry must be put in his place, and he may belong to the same party as the one discharged. Hence the laboring classes strongly favor labor registration as soon as they comprehend it.

There is probably no way in which, at so small an expense and with so little patriotic effort, a larger share of the corrupting despotism and spoils of municipal politics can be suppressed, and the salutary independence of the voters can be more increased, than by enforcing a just, non-partisan system of labor registration.

III. *The Merit System*

1. From the labor service we turn to the large class of officials, next above them, who carry on the great mass of the administrative work of cities, and have only the mayor and the heads of departments and bureaus in the superior executive service.

Of these officials of the executive departments, thus intermediate between the highest and the laborers, there were, in 1897, in the city of New York, about twelve thousand. Nearly all the reasons which commend the policy we have advised as to laborers also require the selection of these clerks and other administrative officials by means which disregard all political and religious opinions and exclude the methods of party patronage and discrimination. Indeed, the moment it appeared that party government has no fit place in cities and villages, the whole theory of appointing, promoting, and removing municipal officials for party reasons became utterly indefensible.

Yet, irrespective of this general fact, party tests for mere administrative offices are both absurd and useless. There is no Democratic and no Republican way of keeping city accounts or of doing any of the work of city clerks. Party opinions are no part of the qualifications needed for discharging the duties of municipal officers. In fact, every such officer is likely to be a bad one in the degree that he is

a mere politician or partisan, or seeks to favor one political party or to obstruct another.

The public has a right to the best persons in such offices who will serve it for the salaries offered, and he who offers the best character and capacity for the salary has the highest claim upon the offices, quite irrespective of his party and religious views. Every party, sect, or party leader that obstructs such a claimant therefore obstructs both individual justice and the public interest.

2. When different persons seek such offices, the just way, and that which is manifestly in the public interest, is to have public examinations into the relative merits of the several applicants for doing the city work, to allow them to compete with each other in these examinations, to mark and grade them according to the merits disclosed, and to appoint those of good character who show themselves to be most capable of rendering the best public service, — all without regard to their political or religious views or affiliations. Such examinations are known as free, open, competitive examinations, because they are open and free to all applicants on the same conditions, without the aid of influence, and regardless of the party or sect to which the applicants may belong. There are various grades of these examinations fitted to test the qualifications needed in different parts of the city service.[1] The son of the poor man and the son of the rich man, the favorite of a party and the independent voter whom a party hates, stand on the same basis in competitive examinations. They must equally rely upon themselves alone for entering them and for securing appointments. The persons will be first appointed and promoted who are shown to be most competent.

[1] There is another kind of examinations known as *pass*-examinations, which provides for no free, non-partisan competition of merit; they are not open to all applicants; they merely decide whether the favored applicant admitted to them comes up to a certain arbitrary standard. The favor of being examined is generally secured through the influence of some boss, party leader, or public officer. These examinations do not enable the government to secure the best who are ready to serve it for the salary offered; they enable adherents of one party to secure a monopoly of all or nearly all the offices. Politicians and bosses naturally much prefer mere pass-examinations.

The competitive system — obviously based on justice — develops self-reliance and independence of character as much as it discourages servility and reliance upon mere influence and intrigue.[1]

3. It is upon such views of justice and the public interests that civil service reform, competitive examinations, and merit system are based. According to the methods of this reform, no aid is required from any party, politician, or boss to enable any citizen to enter — unaided — the examinations upon the same conditions. No inquiries are made concerning the political or religious opinions of those examined. The questions which are asked on the examinations, which are in writing, relate to the character and capacity needed in the part of the public service in which the applicant seeks an appointment. Every applicant makes for himself the record of fitness or unfitness which determines his relative standing among all the competitors. Those who pass the best examinations are graded highest. All are graded in the order of merit as shown by the examinations, and the appointments follow the same order, except that those who fall below an essential and required capacity are not appointed at all.

Only a very small number of places in the municipal service — probably not one in a hundred — require an education above that imparted in the public schools. In the state of Massachusetts, where, between 1885 and 1896, 17,198 persons were examined, 16,935 were educated in the common schools, and only 263 had received a college education. When a people think a common school education so valuable as to tax themselves for giving it to all their children, it seems only reasonable to insist that those who have acquired the most of it, and have also the best character and capacity, should be first appointed to office.

It is obvious that these competitive examinations not only

[1] Mayor Strong of New York, in his annual message (Jan. 7, 1896), declared competitive examinations to be, within their proper range, "the only just and proper means" of making selections for the municipal service, and he sustained them to the great advantage of the city of New York.

stimulate and honor our system of public schools, but justly reward the youth who excel in them. Each applicant who wins an office through his examination may almost be said to have put himself into office by his own merits alone. To the extent that these applicants thus gain the offices by their superior character and capacity, they obviously limit partisan patronage, diminish the corrupt trade in party politics — in short, suppress the spoils system itself.

It seems clear that if all of the administrative and labor places in the municipal service could be filled by the methods we have pointed out, the spoils system would speedily cease to exist, and that the assembly district leaders and the boss himself would soon die of starvation — save as corruption might survive in connection with legislation, and with legislative offices of which we have yet to speak.

Labor registration and the civil service examinations should be regarded as the first, and most decisive, practical steps toward the solution of the great municipal problem. These reforms once completed, nearly all the others will be comparatively easy and certain. We shall show that promotions from those who have thus entered the service would inevitably be made to fill nearly all the higher positions.

40 Some of the direct practical consequences of enforcing these two methods deserve special notice. (1) There would be little inducement left to act the mischievous part of a city-party leader, or carry on the trade of city politics. Those who thus, by their merits, win the places in municipal service, would neither buy the leader's influence, fear his power, nor vote according to his orders. The complicated machinery and the demoralizing contests for apportioning appointments among numerous districts and between rival managers, leaders, and captains, would be useless. Those belonging to different parties, which the registrations and examinations would bring into the service, by sitting side by side in the doing of the city work would constantly teach people the absurdity of party opinions as tests for such employments.

(2) The public servants who have gained their places by their own merit would not be the natural admirers of those

who have secured office on the basis of favoritism and influence — that method naturally seeming to them to be both unjust and demoralizing. Their sympathies would go out warmly to all those who by their own merits and endeavors, alone, are trying to win the places to which they are justly entitled. They would hardly be able to respect those who by secret and vicious ways were seeking honors which they do not deserve.

(3) It is obvious that a system which awards the municipal places to those whose characters and capacity have passed the highest examinations must strongly tend to bring superior persons into the municipal service, to improve its moral tone, and to elevate it in the estimation of the people. Experience has demonstrated that such have been the actual results under the free competitive system.[1] The officials who have entered the departments at Washington under this system are greatly superior to those they have succeeded — much more work being done now by the same number of officials than formerly. Those who enter the public service through competitive examinations are under no obligations to parties or party managers. As a natural consequence of their superior capacity and independence, the public servants of our cities and villages would be elevated in the respect of their inhabitants. No people can respect partisan servility in the public service. But who can refuse their respect to the men and women who have won their positions in honorable public competitions of character and capacity?

(4) The merit system,[2] thus enforced through free pub-

[1] A public competitive examination is greatly dreaded by those whose character or habits are open to successful attack — they rarely venturing to take part in them. Every competitive rival is interested in exposing them and having them struck from the list of competitors.

[2] There is a peculiar fitness in calling this system the "Merit System," as every one who enters the civil service through it does so by virtue of superior merits demonstrated by the examination he has passed. It was for this reason, and to bring out clearly the issue between it and the spoils system, which caused the author in 1880 to suggest the phrase "Merit System," which has now come into general use. Eaton's *Civil Service in Great Britain*, p. 161. There would be an obvious convenience in having fit phrases, such as the "Merit Service," the "Spoils Service," and the "Party Service," for distinguishing those members of the executive service who have entered it through the merit system, from those

lic examinations, provides for examinations for promotions within the service, by which the most competent may reach the highest places. The examinations for promotions not only cause the public servants to exert themselves to make a good record by doing their work well, and give the people the benefit of having the most capable in the highest positions, but they suppress the pernicious practice of placing mere politicians and party leaders, ignorant of administrative methods, at the head of bureaus and departments for mere party advantage. This is not the place for considering how far the selection from the lower places of those who are to fill the higher should be carried — whether all heads of bureaus and departments, if not even the mayor himself, should not be chosen from those already in some branch of municipal service.[1]

It is worthy of notice that, despite the opposition of party managers and spoilsmen, it has already become a common practice to fill the higher places — save those of commissioners — in the best American police and fire departments by the promotion of subordinates. This practice should

who have entered it through the spoils system, or the party system. From the lack of such phrases an absurd practice has arisen of designating the former as well as the system by which they have gained office as the "civil service," though they are — no more than the other two classes — a part of the *civil* service. Candidates for office are formally asked whether they are in favor of, or opposed to, "Civil Service" — a question which is obviously senseless and absurd, unless intended to ask whether the candidate thinks there should be any civil officers whatever. The inquiries should be thus: Are you in favor of, or will you support, a Merit Service? Do you favor a Spoils Service? Or a Party Service? The phrases "Merit Officer" and "Spoils Officer" might also be found both convenient and useful.

[1] If no man could be made mayor who had not served for at least two years in a city council, or as the head of a department, we should know much more than we now do about our mayors, and they would be much more competent for their duties. We should also follow the precedents of the best-governed cities of the world. If it be said that not many trustworthy and competent men for the highest places enter the subordinate positions — under party government and the spoils system — this may be admitted. But let it be provided that the lower places shall be filled by free competition, and that the higher shall be given to the most meritorious who have served in the lower grades, and all experience has shown that abundant capacity will enter the lower grades. In every army, navy, and good police force, — and in the best consular and diplomatic services of the world, — those who fill the higher offices are generally chosen from among those who have served worthily in the subordinate positions.

be extended to all city departments. Why should we put ignorant politicians and party manipulators in command of the experienced and able subordinates of these departments — thus humiliating the most meritorious who have won their places by their superiority, degrading the moral tone of the administration, and depriving the people of the leadership of the men most competent to serve them?

5. Most unjustifiable removals are made, not for the purpose of putting particular persons out of office, but to make places for the favorites of officers and politicians; and, inasmuch as under the methods of civil service reform one of the highest on the competitive lists must succeed to the vacancy, it is not generally found possible to accomplish this purpose. Hence, unjust removals are largely suppressed by the merit system. Nevertheless, we think that the removal of municipal officers, (1) for party advantage, (2) by reason of their political or religious opinions, (3) for any other causes, save those which shall be definitely stated in writing, (4) or until after allowing an opportunity to make an explanation in self-defence, should be prohibited by law.

No formal trial should be required as a condition of removing the members of the municipal service with which we are dealing, but common justice demands that definite charges should be made necessary and that a full opportunity for making explanations should be allowed to the officer sought to be removed.

For these requirements there are ample precedents. Section 12 of the Illinois law, cited in this chapter, prohibits the removal of any city officer or employee, appointed under the examinations, "except for cause upon written charges, after an opportunity to be heard in his own defence." The constitution of New York, as amended in 1894, provides, as to the removal of certain classes of officers by the governor, that one of them may be removed after "giving such officer a copy of the charges against him and an opportunity of being heard in his defence," and as to removing other officers, that a "statement of the cause of removal" must be filed by the governor, with the secretary of state, and reported to the

legislature.[1] If a governor may be required to comply with such conditions, they may certainly be fitly enforced against a mayor, or the head of a city department.

The laws relating to the city of New York provide that "no regular clerk or head of a bureau shall be removed until he has been informed of the cause of the proposed removal, and has been allowed an opportunity of making an explanation, and in every case of removal the true ground thereof shall be entered upon the records of the department."[2] There cannot be the least doubt as to the salutary effects of such limitations upon the arbitrary power of removal as practised by city parties, but we shall point out the need of yet greater restraints upon this power.[3] These provisions are certainly in broad contrast with the theories of that peculiar class of reformers who insist upon an absolute right of removal at the mere pleasure of party-elected mayors.

6. It is one of the good results of filling municipal places through competitive examinations and the registration of laborers, that every party is likely to have the proportion of its adherents due to their numbers in the municipal service — a fact which will do much to allay party jealousies and make it easier to establish and preserve a non-partisan municipal system. No party is likely to be satisfied with any municipal system which will enable its opponents to grasp all the city offices and places, but it can hardly make even a plausible opposition to one which bestows them upon individual merit and makes no discrimination for or against any party.

After the merit system has been for some time fairly enforced, parties will be able to see that it is after all of not much importance to them to have their adherents in city

[1] Const., Art. 5, Secs. 3 and 4; Art. 10, Sec. 1.

[2] Laws New York, 1882, Ch. 410, Sec. 48, and Laws, 1897, Ch. 378, Sec. 1543.

[3] Since the text was written, the President has amended the 11th Civil Service Rule by adding these important words: "No removal shall be made from any position subject to competitive examination except for just cause and upon written charges filed with the head of the department, or other appointing officer, and of which the accused shall have full notice and an opportunity to make defence." 14 Rep. U. S. Civ. Ser. Com., p. 24.

offices, for they cannot convert them into party electioneerers or make them pay assessments. Men of different parties who have gained their places by their own merits, and who have been accustomed to work side by side, naturally enough come to think that they ought not to use their official influence for controlling party politics. It soon becomes much easier to restrain such official intermeddling, as the experience of Boston has already shown us. There the examinations — as well as the registry of laborers — has continued longest and been most complete. As a natural result, the city has recently adopted an ordinance which provides that "no clerk, employee, commissioners, member of any board, or other officer of the city government, except those elected by popular vote, shall be an officer of any political caucus or a member of any political committee or convention."[1] The contrast between this ordinance and the city-party system we have considered seems almost that between an enlightened and a semi-civilized condition. Before civil service examinations were established in England, she was compelled to disfranchise many of her officials during a long period, in aid of suppressing their corrupt and oppressive activity in party politics. In the time of Queen Anne the officials in the postal service were forbidden to endeavor to influence the voters; and in 1772 officers in the revenue and postal service were forbidden by law to vote at all for members of Parliament. This restriction and disfranchisement continued for more than a century, — up to the time when in 1876 the civil service examinations had brought such non-partisan officials into these branches of the public service, and had so enlightened the prevailing sense of duty and propriety, that these officers could be safely — and they were again — allowed to vote.[2]

7. The right — at least in a moral sense — of a city, village, or state to forbid its administrative servants taking an active part in managing politics and controlling elections is too clear for question. These servants ought to be not only

[1] Boston, Rev. Ord., p. 143.
[2] Eaton's *Civil Service in Great Britain*, pp. 85, 131.

impartial toward all citizens, — but to seem to be so, which is impossible if they are to take leading parts in party strife. Most people can see that for policemen or judges to be active in managing parties would not only be indecent, but dangerous; and, but for long usage and partisan blindness, it would seem only in a little less degree improper for any other municipal officials to do the same things.

Every city and village should possess and exercise an authority to make ordinances at least as stringent and comprehensive as those of Boston. How can it be said that municipal elections are free if the city party in power may make party forts and rifle-pits out of the city offices, partisan soldiers out of the municipal servants, and tax these servants at pleasure to pay the expenses of its warfare with its opponents? While the municipal employees and officers should be allowed to vote, they should not be allowed to use their power to interfere with other voters, or to conspire with party managers for controlling city elections. The city election should be made by law a cause of removal.[1]

We have no space for further facts, save as they appear in the note below, by which it is shown that the enforcement of labor registration and competitive examinations have been as salutary in their practical effect as they are just, democratic, and republican in theory.[2]

[1] The difficulties of establishing the salutary principle declared in the Boston ordinance just cited are much greater than most people imagine. When in 1895 a bill was being prepared under the direction of the Committee of Seventy for the reorganizing of the police courts of New York City, one of its sub-committees refused to insert in the bill a provision, proposed by the writer, prohibiting police justices being party leaders or taking an active part in party management.

[2] Civil service examinations began in England in a small way before 1850. The utility they demonstrated soon caused them to be greatly extended. Eaton's *Civil Service in Great Britain*, Ch. XIII. Party managers, patronage-mongers, and especially the aristocratic classes opposed them from the beginning, for they set up personal merit against aristocratic influence and birthright. Before 1876 they had been extended to almost every branch of the civil, and to various parts of the military, administration, with immense advantage to the public service. They had been before established in British India, and have since been more and more extended to English colonies. A quarter of a century or more ago civil service reform methods had ceased to be a matter of controversy either on the part of English parties or English statesmen. Partisan appointments and removals were long ago suppressed in English cities. And, strange as it may seem

IV

1. Every reason which can justify treating as criminals the men who conspire for driving a person out of private employ-

to us, civil service reform methods have so completely suppressed patronage appointments and removals for party reasons, that upon a change of ministry in England less than a hundred officers altogether are changed for such reasons. There are, however, in addition, a trifling number of petty, detached officials who may be changed whose offices — mainly from their insignificance or from mere neglect — have not yet been brought within the examinations. This reform in England has everywhere been a triumph of republican and democratic equality and justice — largely the victory of superior character and capacity in humble life — over that control of places in the public service which the privileged classes, the supporters of the national church, the landed aristocracy, and patronage-mongering rich men had monopolized for centuries.

The good effects of the English experiment naturally led to the establishment of civil service examinations in the United States, — though in a very limited and inadequate manner, — under acts of Congress passed in 1853 and 1855. They provided only for pass-examinations, not as we have explained, practically open to all, but only to the adherents of the dominant party; yet they were in a limited way useful. Between 1872 and 1875 there was a Civil Service Commission appointed by the President, under very inadequate legal provisions, yet its results were beneficial. Congress was, however, too blind and partisan to make the needed appropriations for continuing these examinations. It was not until 1883 that the National Civil Service Reform methods, with competitive examinations in a large and systematic manner, were established in the United States under the law of January 16, 1883.

This law, and the bill which became the law, have been quite generally referred to as "The Pendleton Bill" and the "Pendleton Law" — apparently because Senator Pendleton patriotically presented and supported it in the United States Senate, as he had before presented in that body a civil service reform bill which seems to have been the production of Mr. Jenckes and Senator Sumner. The facts are that Mr. Pendleton had nothing whatever to do with the preparation of the so-called Pendleton Bill. It was drafted by the author of this volume. After being revised by the New York Civil Service Reform Association, — but without the addition or material change of any section, — it was by request of the Association placed, by the writer, in the hands of Mr. Pendleton for presentation in the Senate, and it was there presented by him. The designation of the bill as the "Pendleton Bill" facilitated its substitution in place of the prior bill which Mr. Pendleton had before presented — a bill which, in the opinion of the writer, was not only unconstitutional, but in several particulars incapable of enforcement. The bill as it passed Congress remains unamended to this time, 1898. The new law provided for a Civil Service Commission — of which the writer was the member first appointed — and for the establishment of a system of open competitive examinations.

1. The first examinations under this law extended to little less than fourteen thousand official places, and to only twenty-three — being the largest — post-offices. It has so won the support of public opinion that, despite constant party opposition, the examinations for which it provides are now extended to more than eighty-seven thousand official places and to more than six hundred post-

ment, or for making him odious, would justify party managers and leaders being treated as guilty of criminal conspiracy when

offices. Every President, responding to the public sentiment in their favor, has largely extended the enforcement of the reform methods. The whole number of officials and employees in the Federal executive service in 1897 to which examinations might be extended was 187,000, whose salaries amount to $100,000,000. The annual salaries of those to which the examination already extend amount to $70,000,000, and they are being steadily extended to the residue of these places, being mostly those of minor importance. 14 Rep. Civ. Ser. Com., pp. 21, 22.

2. The enforcement of the civil service law of Massachusetts, enacted in 1884 and based on the national law, has been followed by admirable results both in the civil service of the state and in that of its municipalities. No party in the state now ventures to oppose a civil service reform policy.

3. In the state of New York, in which a civil service reform law, also based on that of the nation, was enacted in 1883 (Laws, 1883, Ch. 354), the progress of the examinations has been less satisfactory than in Massachusetts, mainly by reason of partisan opposition to them and the lack of friendly support on the part of several governors and mayors. While Mr. Cleveland was governor, the reform advanced as rapidly in New York as it did in Massachusetts. But subsequently several governors and various mayors have appointed unworthy commissioners and other officers to execute the law, and have apparently been willing that the authority conferred by it should be prostituted for party advantage. Frauds and inefficiency in its execution were the natural result, but we cannot go into details. It must suffice to say that the law as a whole has achieved very useful results, and is now (December, 1897) being pretty well executed in the official service of the state and in that of several cities, and especially in Brooklyn, New York City, and Buffalo. The principles on which the law is based have at this time (1897) a stronger support in the public opinion of the state than they ever had before. The New York Constitutional Convention of 1894 approved the reform policy and assured its ultimate enforcement by a constitutional provision in these words: "Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained so far as practicable by examinations, which, so far as practicable, shall be competitive" (Const., Art. V. Sec. 9). This language, which the highest court of New York has interpreted most favorably for the purpose intended, is at once the most comprehensive and enlightened provision ever yet made by an American state for the improvement of its civil service. It can hardly fail to prove fatal to the spoils system, the boss system, the city-party system, and the autocratic mayoralty system. It is a fact of significance that in the New York Constitutional Convention, which adopted this noble provision, both parties were fairly represented. But in the legislatures of New York, since 1894, a partisan majority, led by a state boss, has prevailed until 1898. Hence we need not be surprised that this majority has refused to enact the proper laws for carrying this provision into effect, though the courts have supported its execution as far as practicable under the old law and the constitution itself. It ought to be added that the last governor of New York (Mr. Black) used his influence for the passage of a pernicious law which has been almost as disastrous to the cause of reform in New York as it has been to his own prospects and renomination. But the outcome has been that Colonel Roosevelt — the first earnest Republican supporter of civil service reform ever elected governor of New York — is his successor; and

they conspire or coöperate for causing the removal of a public servant, or for making him odious, because he omits to pay a political assessment, or to electioneer for a party. We have seen that an Illinois law, referred to, prohibits the payment of moneys for any party or political object by any municipal employee, to any other municipal officer or employee, or to certain other officers named. This prohibition should be made yet more general and absolute so far as city officers and employees are concerned. Such payments are generally made by them either from fear, or from hope of official or party favor, if they are not in fact intended as bribes to avoid removal. The people will never believe municipal servants to be impartial — nor are they likely to be — so long as they contribute to the campaign funds of a political party. Provision should be made by law for paying all legitimate expenses of municipal elections, and all others had better remain unpaid.[1]

2. In view of the salutary effects of civil service reform, it has very likely occurred to the reader that, if the managers of the great parties in our cities had during the last decade given one-tenth part of the efforts and the money to its support which they have given to partisan contentions for patronage, and to vicious, hopeless endeavors to secure good governments through the city-party system, they would have succeeded in removing a very large part of the municipal evils which are now so threatening. Taking an illustration from New York City, it may be said that for more than sixteen years and under great difficulties, a small number of her citizens have successfully maintained the struggle for this reform, while the great body of politicians, and party managers, have bitterly opposed it. Tammany — like the Republican boss and his vassals — did not fail early to see that its triumph would be fatal not merely to its own domination

there is every prospect that the reform policy of the constitution of New York will now have a sincere and efficient support at the hands of her governor.

[1] In state and national contests involving principles, money may be given with advantage for paying the legitimate expenses of enlightening the people as to those principles. But party principles are not involved in elections for city officers.

but to the city-party system. The mere partisan and corrupt Republicans have resisted a civil service reform policy, apparently because they care less for the public interests and for the many worthy Republicans which a reform policy would put into office in New York City, than they do for the spoils which they expect to secure through their friendly relations with Tammany and its boss.

V

1. The proper term and tenure for municipal office is one of great and neglected importance, as to which something should be said here — but more will be added in future chapters. All the reasons which require that persons should enter the official and labor service of cities irrespective of political opinions, and on the basis of merit alone, also require that they should not be removed by reason of such opinions, or to promote any party purpose. The public interest generally requires that they should remain so long as they continue to be both faithful and efficient, yet subject to such wise and just provisions as may be established as to the proper term of office. There are several peculiar and seductive interests which tend to establish shorter terms than the general welfare requires: (1) young, sparsely peopled communities incline to provide them in the interest of rotation in office;[1] (2) city parties favor short terms because they and their managers gain power and profit from frequent and numerous elections; (3) office-seekers, patronage-mongers, and demagogues desire them for reasons too obvious to be mentioned.

The interests of the unselfish public in the matter being indirect and remote, these special interests are too often able to prevail. Besides, there is an unfortunate lack of appreciation of the reasons which make short terms of office and inadequate official experience — especially in large cities — a great misfortune. It is almost obvious that the larger the

[1] It is a familiar fact that some of the early New England colonies chose their officers for a term of only six months.

city and the more complicated its affairs, the greater the need of long terms for office — long enough for the officers to become well instructed in municipal methods and details.

When, in state and national elections, important principles are discussed, these elections may have an educational and elevating influence; but in city elections for mere city officials such principles are rarely involved, and the contests, being largely for party spoils and power, are generally without elevating effects — even if they are not demoralizing.

To reduce the number of these elections by increasing the length of official terms and diminishing the number of elected officers — without going so far as to prevent the people having a real control of their affairs — is, therefore, in the public interest. We can easily see what interests would gain most, and what would lose most, by reducing official terms to two or three months, and by electing four or five times as many officers as are now elected. The business of managing party politics and elections might become, under such conditions, the most active and profitable known to our cities. If, on the other extreme, there were no popular elections for city officers oftener than once in from two to four years, our city parties, and their managers and leaders, might be ruined from lack of business, — so dependent are they on short terms and numerous elections.

2. Obviously, a very important principle — aside from such considerations — is involved in the matter of determining the proper length of the terms of municipal officers — a matter which has been very inadequately considered, and as to which heterogeneous usages prevail. From the mere habit of having short terms for officers in villages and small cities, where every voter can judge as to how official functions are discharged, such terms have been thoughtlessly — or by partisan connivance — extended to large cities, where no such judgment is possible, and very short terms and all needless elections are a misfortune.

Three characteristic examples will illustrate these evils: (1) A law enacted in 1895[1] created a board of police magis-

[1] Laws New York, 1895, Vol. 2, Ch. 601.

trates for New York City, of which the members were given an appropriate term of ten years. But the law provided that the clerks — under the board, whom it appoints — shall have a term of only four years, and that the assistant clerks and other subordinates shall have a term of only two years. These short terms tend to cause the clerks to constantly intrigue for retaining their places through vicious influence, and also to encourage outsiders to constantly hustle and bargain for them. No good reason can be given why the terms of the clerks should not be as long at least as those of the magistrates, or even why a clerk should not remain in office, like a policeman, until removed for good cause.[1] To send them away at the end of two years, when they have just become familiar with their duties, is a needless act of folly, highly detrimental to the public interest. (2) The charter of the city of Brooklyn enacted in 1888 provides for the election, by the residents of each of its wards, of a constable every year for the term of one year only. When we consider that a constable is an officer no more fit to be elected than a policeman, or a fireman, what an amount of intrigue, wire-pulling, and expense attend every such election, and how great would be the advantage of bringing all constables under the appointment and the supervision of some court, and of giving them a stable tenure analogous to that of a policeman, we may well be astonished — save for the greed and power of patronage-mongering politicians — that such elections are tolerated in any enlightened city.

(3) A charter granted by the legislature of Vermont in 1894 for the new city of Montpelier contains a variety of mischievous provisions as to short terms and excessive elections, several of which we fear are not uncommon in recent city charters. The members of the city council are annually elected, and, not being classified, they are all elected each year — a method which not only strongly tends to mere party government, but to prevent adequate experience in the

[1] While these pages are being revised (July, 1897), a scandalous contention is going on in this Board of Magistrates relative to the appointment of some of these short-term clerks.

body, or a steady and consistent policy. The fact that all members are elected in and for little wards — none being from the city at large — must constantly tend to local factions, to the choice of little politicians as members, and to the neglect of a policy broadly conceived in the interest of the whole city rather than in that of particular sections of it. Only the high character of the voters of the city can long arrest the debasing tendency of such a government. If half or two-thirds of the members of the council were selected from the city at large, and all of them were so classified that no more than one-third of the whole would be renewed the same year, we must think that a much better government than is now possible would result.

The mayor is annually elected, and he appoints the chief of police and such "other police officers" as he "shall think necessary" — all for the same one-year term as his own — perhaps about as effective and mischievous a provision as could be contrived for securing a partisan police force, and making it servile in the mayoralty elections.[1] The power of appointment and removal is not restricted by any safeguards against partisan proscription, or in aid of securing good character and capacity in office, but may be exercised "at pleasure," as may suit the designs of a partisan and scheming mayor or party majority.

The city judge is elected for only two years, a term which in most large cities would be disastrous, but which may be tolerated for a time in a state of such rare political virtues as Vermont, which has kept its judges long in office, though they have been annually or biennially elected.

But this charter has other provisions worthy of notice. It not only makes the mayor, treasurer, city clerk, aldermen, sheriff, auditors, and constables elective by the people, but also "city grand jurors," "an overseer of the poor," . . . "petit jurors, and grand jurors for the county . . ." as well. On the whole, this charter may be regarded as a

[1] A city people so virtuous as those of Montpelier, who need only two policemen, and have only seven arrests a year for breaches of the peace, can probably endure so vicious a charter for a short time.

model for establishing mere party government, and the most numerous, needless, and mischievous elections possible in a little city. It is not easy to imagine what would be the disastrous results of such a municipal system if applied to a large city.

3. It cannot be too earnestly insisted that as cities grow larger the need becomes much greater for long terms of office, in order to gain the experience necessary for pursuing a consistent, economical policy in carrying forward large municipal works. Much city administration — that connected with drainage, water supply, internal transit, parks, docks, streets, and public buildings — must be carried on according to comprehensive and consistent plans requiring several years for their execution. When the terms of administrative office are very short, it is almost impossible to fix responsibility upon the guilty. Beyond this, too frequent city elections lead to the despotic rule of parties, and to the impairment of official independence, so that, in most large cities, the most competent officers lack the independence essential for the best discharge of their functions.

We have seen that the long terms of the members of city commissions have contributed to their salutary efficiency, that disastrous effects were the result of short terms of office for police justices in the city of New York, and that great improvements followed the lengthening of their terms to ten years. Every judge is independent and courageous for the best discharge of his duties in the degree that his tenure is firm and his term is long. The large cities whose judges, justices, constables, coroners, and sheriffs have had the shortest terms, have, we think, had the worst judicial administration. It can hardly be doubted that if the terms of administrative officers in cities were generally made only a fourth as long as they are, municipal abuses would be increased fourfold, or that if the terms of these officers were doubled, abuses would be greatly diminished.[1]

[1] It hardly need be said that adequate terms of office should be accompanied by more effective provision for the speedy exposure of all malfeasance, and for prompt removals for good cause — subjects on which we shall offer some further

4. The party theory of short — generally only two-year — terms for mayors and many appointed officers seems to have found favor not as a demonstrative utility but as a specious theoretical remedy, justified by no experience. Every good city police department, health department, and fire department condemns short terms and frequent elections, and is excellent in the degree that it is independent of them. If our policemen and firemen were appointed or elected for only one or two years, who can doubt they would be as bad as our constables, coroners, and sheriffs?

5. There is hardly any business administration in the country which is better conducted than that great mass of it which is connected with the navy department and the engineering duties of the war department. The fortifications, the army stations, the transportation, the arsenals, the navy yards, the ships, the forts, the works of internal improvements, and the vast expenditures all over the Union which the army and navy require, would afford opportunities for fraud and corruption — under the city-party system — much greater than cities supply; yet frauds and abuses in cities are far greater than those which arise out of these departments.

It is profoundly significant that the officials who directly control the work under these departments have no official terms, and that their superiors are affected by no term less than four years. Most of those who direct this work serve during good behavior. Yet, their work not only goes on with a regularity, vigor, and economy, but with an exemption from frauds and scandals, which our city officers seem incapable of rivalling, and from which our politicians and party managers seem incapable of learning. Does any one think that a two-year term for postmasters, collectors, subtreasurers, United States engineers, and United States district attorneys in cities, would be an improvement?

6. There is no better municipal administration in our

suggestions. It would be a public advantage to greatly extend the requirement that city officers shall give security for good behavior — as they must in St. Louis.

great cities than that which goes on under the judges of our higher courts, whose terms are longest and whose opportunities for corruption and injustice are greatest, yet who are — save at rare periods — unadmonished to duty by any imminent election. Letter carriers cannot now be removed save for cause, yet they were never before so faithful.

Obviously, there is some effective, omnipresent power, quite independent of short terms, or near election, which holds to duty both these judges and the other officers we have just referred to — a power of which the short-sighted, short-term, frequent party-election theory takes little notice. It is the power and fear of public opinion and that noble sense of public duty which all worthy, non-partisan officers feel — not to serve a party servilely, but the whole people faithfully.

7. In the whole range of official functions under the republic, there are hardly two classes of officers whose duties are more unlike, and none whose positions subject them to greater temptations, than justices of the Supreme Court and the engineers of the United States army; and yet no officers have discharged their duties more faithfully, and none have been less affected by any saving influences from short terms or impending elections — both having a tenure during capacity and good behavior. Such considerations seem to make it clear that in trying to improve our municipal administration, we should rely more upon public opinion and an independent sense of duty, and less upon short terms of offices, frequent elections, and partisan contests.

The fact may be stated here, — to be established later, — that in European cities, where administration is much better than in American cities, the official heads of departments, and their subordinates as well, hold their offices much longer, and have a far more stable tenure, than like officers in the United States. The short-term, biennial-election theory of city government is that which all professional politicians prefer — and especially for mayors. They know by experience that party-elected mayors — with rare exceptions — feel a paramount responsibility, not to the city, but to their party and its managers.

VI

1. It will be instructive to consider some of the partisan theories noticed in this chapter, as they are embodied in the charter of a great city. We select that of Brooklyn, New York, because while it has some excellent provisions of which we shall avail ourselves, it has done more than any other charter to introduce the pernicious practice of changing the heads of city departments biennially for party reasons, and to establish a partisan and autocratic mayoralty system.[1] It has come to be a largely accepted American doctrine that the improvement of city government must be sought through increasing the power of the mayor and diminishing that of the council and other officers, and through the election of both the mayor and the members of the council for the same two-year term. This Brooklyn charter first gave prominence to this doctrine, and it is assumed without warrant to have vindicated its wisdom. The mayor had not, in fact, so comprehensive a power under this charter as he is often assumed to have possessed; and in the departments where his power was the greatest the government was the worst, being a strict party government, quite compatible with a constant, dominating boss, save in the cases of uprisings of the people for municipal reform.

This famous charter provides for a combination of incongruous theories and methods in city administration: (1) for a city council — with members elected for a term of two years — which has nearly all the ordinance-making authority, the mayor, however, having a veto power which two-thirds of the council can override; (2) for a board of estimate and apportionment made up of various independent officers and bodies having, approximately, the vast powers we have explained in the case of the New York City Board of Estimate; (3) for fourteen separate commissions, several of them having large powers, and some of them made up of members having much longer terms than that of the mayor; (4) for a mayor

[1] Laws New York, 1888, Ch. 583.

who is to be elected by popular vote once in two years, and who is to appoint the members of many of the commissions for the same term as his own.

2. It is obvious that such a government is based upon very incompatible theories. The mayor being elected by a party majority every two years, and the council being elected for the same two years — and probably by the same party majority; and the two — having the whole ordinance-making power and appointing power — proclaim the purpose of establishing a strict party government; while the Board of Estimate and Apportionment and the thirteen other commissions — with the long, classified, official terms of their members which might often bring adherents of different parties into office — express a distrust of this biennial party system, and declare the need of longer terms of office and a more stable policy. We shall soon find it necessary to decide which of these conflicting theories should prevail. This Brooklyn charter is obviously appropriate only for a transitional period.

3. Several of the commissions under this charter are conspicuous for their repudiation of short terms and autocratic mayors. For example, the Board of Elections consists of four members whose terms are five years, and only two are to be of the same party. The ten members of the Board of Assessors are appointed for the term of five years, and these terms are so classified that only two members retire biennially. The official terms of the forty members of the Board of Education are three years, and they are so classified that they do not all retire at once. The Board of Estimate and Apportionment is a very great check upon the mayor's power. It is manifestly absurd to hold a mayor responsible for such a government, or to regard government under this charter as having demonstrated the utility of an autocratic mayoralty, which did not exist — save within narrow limits.

Nevertheless, the heads of the majority of the Brooklyn departments have terms of only two years, contemporaneous with that of the mayor, which involve them in all the scheming and bargains of his election. Among the departments so involved are the fire department, the health depart-

ment, the excise department, and the police department — being those which can more readily than the others be prostituted for carrying party and mayoralty elections. Despite its good provisions, it was the manifest purpose of the framers of this charter to establish party government, to rely upon an endless series of party contests, and to give the city offices, in the main, as rewards to the members of the party which should triumph in the city elections. Such a purpose is made plain by the provision which allows the mayor and the chiefs of departments a much larger power of removal within thirty days next following their entering upon their official duties than they are allowed afterward.

This provision in substance says that to the victors belong the spoils — spoils which these officers should be able to grasp and apportion within thirty days. It would have been much more in the interest of good government if the new and inexperienced officers had been forbidden — save for cause clearly proved — to make any removals for several months after entering their office, until they had learned who ought to be removed, and there had been time for party passions to cool. During these thirty days the mayor is allowed to remove at his pleasure, but for the twenty-three remaining months of his term his attempts to remove would be ineffective unless approved by a court. It is difficult to say which of these extremes is most indefensible and mischievous. But the politicians of Brooklyn were naturally satisfied when the mayor they had elected was compelled to speedily give them offices from which only the judgment of a court could oust them. We must think that any man fit to be a mayor would be ashamed to remove an officer for reasons that he had not the moral courage to avow. To hold such a mayor responsible for the government of the city — especially after the first thirty days of his term — is manifestly absurd. The full appointing power of the mayor of the city of St. Louis — who is elected for four years — does not arise until the third year of his term, when he is likely to have become able to act intelligently.[1]

[1] *Am. Comw.*, 604.

These biennial terms practically say to the heads of city departments and bureaus in Brooklyn, "No superiority of ability or devotion on your part will keep you in office beyond two years; the city expects no administrative policy at your hands which looks beyond twenty-four months;" "If you wish a reappointment, use your official power, not independently for good government, but effectively to increase the vote of some new mayoralty candidate." This immediate control by the new mayor of the most important patronage naturally tended to involve its promise and distribution, for votes, in every mayoralty election.

Practice under the Brooklyn charter has responded to the natural tendency of its provisions. The city government of Brooklyn, with very limited exceptions, has been a party government, so far as the action of the mayor has been effective, in which the machine and the spoils system have prevailed. From the time when the reform sentiment triumphed in the election of Mayor Low in 1881 until — after his term — it triumphed again in 1894, mayors were elected, and appointments were made by them, on party grounds. To a large extent the interests of the city were subordinated to the interests of party — the main checks upon the spoils system having been the civil service examinations which public opinion and the state law enforced.

CHAPTER VIII. — THE SAME SUBJECT (*concluded*). EVIL EFFECTS OF TOO SHORT TERMS OF OFFICE AND TOO MANY ELECTIONS. HOW TO INSURE A SALUTARY PUBLICITY OF OFFICIAL ACTION

Why needlessly short terms and too frequent elections are evils. Examples of them. What duties of officers in making appointments should be declared and enforced by law. The subordinate officers wrongfully removed should have a personal remedy. The exposure of malversation in office should be facilitated by law. The right to know what officers do. The remedies the people need in order to destroy the trade of the boss and the corruptionist. Publicity as a remedy for political evils. Examples of legislation in aid of publicity of official acts. The more stringent laws needed. The qualification of voters, naturalization, registration, and their enrolment considered. Some laws on these subjects suggested, and some remedies for abuses proposed. Duty of citizens to aid in securing good nominations and to vote. Theory of compulsory voting. Basis of the feeling of official responsibility. Little city assembly districts destroy it, discourage voting, and favor party despotism. Election in the city at large highly desirable. How little city districts strengthen the Tammany and partisan system and put little politicians into office.

In looking over the facts brought out these truths are conspicuous: (1) that our laws allow needless facilities for the abuse of municipal power; (2) that a large part of the success which attends official malfeasance is made possible by reason of the secrecy of official action; (3) that publicity more complete than heretofore may be made a salutary remedy; (4) that as nearly all municipal reforms have resulted from a union of patriotic citizens of different parties who are peculiarly independent of partisan dictation, it is desirable that these citizens should have increased facilities both for effective coöperation, and for understanding and defeating the secret and corrupt action of the enemies of good government.

We shall therefore propose several methods having these ends in view — not hesitating to suggest some which are in a measure novel.

1. Every needless city election, and hence every needlessly short term for a city officer, adds to the mass of the

municipal evils to be dealt with. We need to elect mayors, members of city councils, and members of legislatures and of Congress, from cities, for they are representative officers who make laws and ordinances. They must have relatively short terms, so that the wishes of the people may at all times be truly represented. Through them, if worthy, the people can secure the kind of laws and ordinances they desire. But all municipal officers whose function it is to aid in carrying these laws and ordinances into effect — whose duties are administrative and should be discharged at all times in the same way, and regardless of political or religious opinions — should be appointed, and they should therefore remain in office so long as they are both faithful and efficient.[1]

It would be better in practice if most of the subordinate, administrative officers were, like policemen and firemen, without any fixed term of office, so that they may be retained so long — and only so long — as they continue both faithful and efficient, being always liable to be removed for cause.[2] These officers do not deal with principles or have discretion as to policy, but are concerned with the details of business needing practical skill and much knowledge of details. They should be unaffected by popular elections.

Partisan blindness, or mere usage, closes the eyes of vast numbers of voters to the absurdity of what goes on before them. As these pages are being written (November, 1895), a costly, needless party election is being held in the city of New York, where more than 230,000 city voters are casting their ballots in more than 1300 election districts, for two persons — nominated after manifold and corrupting barter and scheming in the party primaries — to fill the offices of County Clerk and Register for terms hardly long enough to enable them to become expert in the discharge of their duties. The functions of these officers, who have charge of city papers and records, are administrative — are, in fact, largely clerical. All party intervention in their selection,

[1] We are not here speaking of judicial officers, though most that has been said is applicable to them.

[2] Such is the view of Professor Goodnow. *Mun. Prob.*, p. 277.

and all discrimination based on their political or religious opinions, — being as needless as they are mischievous, — are discreditable to our municipal intelligence.

The party opinions of these officers and their subordinates are intrinsically hardly of more importance than the party opinions of the architects and builders who planned and constructed the buildings in which the duties of these officials are to be discharged. Yet, a fierce, demoralizing party contest goes on concerning them and the spoils involved, with the result that the persons generally chosen are hardly superior mentally — if they are not morally inferior — to the ordinary bookkeepers of a large corporation or dry-goods store. A fit exercise of the power of promotion would fill these offices with persons — all the more useful, perhaps, if their party politics were unknown — much superior to the men who generally secure them. A thoughtful man can hardly contemplate such elections without some doubts as to the competency for local self-government of the people who tolerate them.

II

1. When the public interest requires that party government shall be excluded from cities and villages, and that appointments be made from among the most meritorious, irrespective of their political or religious opinions, it is of course the plain official duty of every municipal officer in making appointments, promotions, and removals to conform to these interests. It may be difficult in the present state of public opinion to fully enforce this duty by penal enactment. Yet we can go far toward it, and the true rule of moral obligation should be distinctly declared by law. Such a declaration would do much toward creating a public opinion which would exact its rigid enforcement, — would strongly tend to make any mayor or other city officer infamous who should disregard it. We enforce laws against gambling and lotteries, though we know these crimes can hardly be completely suppressed. No good citizen will justify a mayor or other city officer in making an appointment or removal

against the public interests, for gaining an advantage for himself, his relatives, or his party, or for injuring his opponents. Why, then, should not the law condemn such conduct? Are high city officers to be allowed with impunity to flaunt their violations of their official duty in these regards — to admit their malfeasance in making removals without good cause — before the eyes of the people, while the meritorious laborers and clerks who suffer from this wrongdoing are denied all remedy?

There are few more striking evidences of the dangerous perversion of public judgment by party spirit than the fact that such prostitution is not yet condemned by law — that hundreds of worthy municipal servants may be dismissed, without fault on their part, by a rough, half-civilized politician and swashbuckler at the head of a municipal office, for the purpose of aiding his faction and rewarding his corrupt followers, and yet commit no crime. There are some wrongs which cannot, with advantage, be punished by law, but we shall hope to show that these are not among them. The difficulty of proving the purpose or motive in making wrongful appointments or removals could hardly be as great as that of proving "malice aforethought" on a trial for murder.[1]

2. The power of appointment and removal is a power in trust to be used for the benefit of the people, and not for the advantage of any person or political organization. To use it for the latter purposes is as indefensible and is as fit a matter for penal prohibition as to use the public money for the same purpose. It is only besotted party blindness and seductive usage which have allowed the wholesale prostitution of the appointing power to go unpunished, while the

[1] In the main, the remedy for such wrongs must be through public prosecutions, but we think an inferior officer should be allowed, under carefully guarded provisions, and in aggravated cases, to maintain an action against his official superior. Suppose it were admitted that a removal of a competent and worthy person had been made for revenge or to gain a party advantage, or to make room for an unfit person. Should there be no means of investigating the facts? The danger of having corrupt party and patronage-mongering secrets exposed by such a proceeding would obviously impose very salutary restraint upon appointing officers.

misuse of public money is prohibited as a crime. It may sometimes be more difficult to prove that a clerk was appointed by a superior officer in violation of law for party or personal advantage than to prove that the officer used public money for the same purpose, but we do not allow the authors of secret poisonings or of assassinations in the dark to escape untried because their crimes are not so easy to prove as the taking of life by the firing of pistols or stabbing in daylight.

III

1. Another remedial suggestion is appropriate here. We have seen how debased city parties and factions — by controlling policemen, police justices, jury commissioners, and district attorneys, and especially by selling judicial nominations — have made it increasingly difficult to expose malversations in office. Not only the ruling party, but its whole circle of officials mainly its adherents, have a common interest in keeping disgraceful secrets. Citizens, in their efforts to expose official malfeasance and the crimes of party favorites, have not only had to meet the expenses of their efforts, but to overcome the obstructions which partisan officials naturally put in their way. Adherents of a city party are generally ostracized, and certainly lose their chances of an office, if they expose the frauds of their party or its leaders.

When the despotic discipline of the two great conspiring city parties generally prevents their adherents disclosing official malfeasance, should the publicity so greatly needed be obtainable only through a grand jury, or a legislative committee usually selected by one of these parties? It is a fact, often illustrated, that such committees seek party advantage quite as much as the disclosure of salutary truths, even if they do not wholly shrink from exposing the gravest abuses lest their leaders be found in conspiracy with their guilty opponents. The people have a legal and moral right to know how public authority is exercised, what corruptions are being concealed, regardless of its effect upon any party.

They have not only a right to know all this, but should be provided with the best facilities practicable for ascertaining the facts promptly, and with the least trouble and expense. Public officers have no right in their own interest to keep secrets from the people.

For preventing most evils in official action, prompt and complete publicity is one of the most effective remedies. If the bargaining, the secret incriminating correspondence, and the patronage-mongering between partisan officials and party bosses and leaders — which result in frauds, bribery, and unjustifiable appointments and removals — could be made public as they occur, who can doubt that the largest part of such abuses and nearly the whole trade of the boss would be suppressed?

2. Though the complete publicity to be desired may be impossible, we should do our utmost to encourage and facilitate the bringing of official wrongdoings before the people — so as to make the dread of exposure a constant admonition to malefactors. A notorious, sauntering burglar is examined to see if he has the tools of his trade in his pockets. Why may not a notorious boss or lobbyist be examined, in the discretion of a judge, on *prima facie* proof that he is the holder of a fund raised to be used according to the methods of his trade — to bribe voters or buy legislators? Should he be undisturbed, if he has the money at command ready to pass or defeat a pending bill?

3. More and more of late statesmen have felt the need of affording private citizens the means of exposing official malfeasance, and of securing, through their own action, that publicity in aid of justice and good government which parties and partisans official so generally deprecate and dread. Some examples of this are interesting and instructive. An English statute gives four voters — or even one if he be a candidate — a right to initiate and carry forward a proceeding in court for determining whether the result of a municipal election was secured by illegal or corrupt means, — certainly a far-reaching and very appropriate authority.[1]

[1] Eng. Municipal Corporations Act of 1882; Shaw's *Mun. Gov. G. B.*, pp. 344, 345.

A law of New Jersey, enacted in 1879,[1] authorizes twenty-five freeholders and taxpayers who shall state in an affidavit "that they have cause to believe that the moneys belonging to a city or village are being, or have been, unlawfully or corruptly expended," may apply to a justice for an order for a summary investigation; and it is made his duty, in his discretion, to order it. The municipal corporation investigated must pay the costs of the proceeding.[2] A law of Massachusetts, enacted in 1893,[3] authorizes any five electors to conduct a legal proceeding to compel a compliance with certain important requirements of law — requirements which parties and politicians are not inclined to obey.

The constitution of New York, as amended in 1894,[4] gives any citizen a right to maintain a suit to determine whether an apportionment of representation made under it is constitutional and valid — a power certainly of far-reaching importance which establishes a very salutary principle.[5] The laws of New York authorize taxpayers to bring suits to prevent the illegal use of official power.[6] Why should not the taxpayer, according to the theory of these laws, be authorized to inquire into a proposed corrupt use of money for an alleged public purpose?

A law of New York[7] authorizes a justice of the Supreme Court, on the application of the officers of a charity association, to make an order empowering its agents to enter, inspect, and report upon the condition of state, county, and city institutions, and requires the officials in charge of them to facilitate such inspection in all possible ways. Here is an

[1] Laws, 1879, Ch. 15.

[2] Hon. Garret A. Hobart, Vice-President of the United States, was the most effective influence for the passage of this law, now known as the "Hobart Law," and in a letter to the author he says "it has been very efficient in its work and in accomplishing results."

[3] Ch. 417, Sec. 239.

[4] Art. 3, Sec. 5.

[5] A law of Illinois, approved March 20, 1895, has in a limited way adopted the same policy.

[6] *Zeigler* v. *Chapin*, 126 New York Reps., 342; N. Y. Laws, 1881, Ch. 531; 1887, Ch. 673.

[7] Laws, 1893, Ch. 635.

immense power for causing a prompt and salutary publicity to be given to official delinquency — a proceeding which, with the other laws cited, seems to be in point of principle adequate precedents for any investigation we have suggested.

4. Yet there is authority for investigations in the laws of New York [1] of a far more extensive and important kind than any authorized by the laws we have cited.[2] This law provides that any five citizens, being taxpayers, who shall set forth in an affidavit any misapplication of public money, any violation of law, any neglect of duty, or any delinquency on the part of any officer or persons mentioned in the affidavit, may go before a judge and obtain an order for the public examination of such officer or person before any judge touching such matters, and that the officer or person implicated must answer concerning the same upon the examination which is to follow. The scope of the charges in the affidavit measures the scope of the examination. Comprehensive as these provisions are, they affirm a principle which is obviously capable of a still larger practical enforcement — an enforcement which may be made broad enough to reach almost every kind of unlawful doings of officers or citizens, connected with their public duties. The law should clearly be made to reach the custodians and purveyors of corruption funds, held to be used for influencing legislatures after the manner of American lobbyists and bosses, and also the holders of all moneys received as assessment extortions from the public servants.

The proceeding under this law is not intended to be a trial, or any part of a trial, but is an easy and prompt means of exposing dangerous and unjustifiable doings. It proclaims a right of publicity as to official action, and provides for securing it. The dread of exposure would be a constant and wholesome admonition to all malefactors.

The proofs taken under this New York law are to be filed with a clerk of one of the courts, and are not to be used as

[1] See also N. Y. Laws, 1882, Ch. 410, Sec. 423.

[2] See Laws, 1873, Ch. 335, Sec. 109, and N. Y. Consolidation Act, Ch. 60.

evidence against the persons compelled to answer, but are to be open to public inspection.[1]

5. We must think that a well-framed law, based on the theory of those we have cited, could hardly fail to be a salutary check both upon corrupt schemes and partisan despotism. It would make the higher public opinion, as uttered through the public press, a far more prompt, effective, and salutary power. Investigations would not depend on the willingness of a party-elected district attorney or a party majority in a legislature to make them. Slander of public officers might be less mischievous, for every officer unjustly aspersed could challenge his accusers to either examine him or be silent. There would be little excuse for defamation based on mere suspicion when the facts could be so easily ascertained.

6. We think that, in aid of these examinations, and of official honesty, there should be a law forbidding any public officer, association, or person, knowingly becoming the custodian, controller, stakeholder, trustee, or purveyor, of any money or property raised, or intended to be used, for accomplishing any illegal or corrupt purpose, or for influencing any legislator, officer, or court. The collection of political assessment being illegal, why should not banks and trust companies be forbidden by law to knowingly accept on deposit the money thus extorted? The nation refuses to have its mail-bags contaminated by obscene literature. Can banks or trust companies justify themselves in knowingly receiving money collected by illegal means, or intended to be used for bribing legislatures or buying votes?

[1] Under this law, if slightly amended, — and at vastly less expense than by any other means, — we think all the investigations could have been made which were conducted by a legislative committee in New York City in 1894–1895. Abuses could have been probed from which the ruling party shrank. An examination under the law some years ago drove an unworthy New York police commissioner — Oliver Charlick — from his office. The law contains various safeguards against the abuse of the proceedings under it; and costs and penalties may be imposed for causing an examination without apparent justification in the facts disclosed.

IV

The subjects of the qualifications of voters, their naturalization and registration, and their enrolment for taking part in party primaries and conventions are matters of general application, which can receive no adequate consideration in this treatise. Yet, as they are connected with the gravest abuses in cities, a few remedial suggestions are appropriate. It is impossible to consider the constitutional and legal provisions on these subjects in reference to the public interests without the feeling that some of them have been framed, not so much to promote the general welfare, as to secure party advantage. The leaders of city parties, naturally dreading the repute of being more unfavorable than their opponents to opening the franchise to the vilest class of voters, whom they hope to win, enter into a demoralizing competition for a mischievous extension of the franchise. Our too extended suffrage is largely the result of this party competition — the higher public opinion having been in but a small measure an effective force in fixing its conditions. The reputable men of both parties vote to enfranchise the vilest citizen, not because they think it in the public interest to do so, but because they fear the action of their opponents will win most of their votes.

1. As it seems to us clear that all attempts to establish a property qualification for suffrage — even if it would be just — will be unavailing, we shall give no space to the subject. Poor men may be, if not generally as intelligent, yet quite as patriotic and conscientious as rich men. It is not always easy to say whether the poor or the rich most need the suffrage for their safety, or which is in the greatest danger from voters of the depraved class, — which city parties do most to bribe and to bring to the polls.

We cannot do justice to the reasons which would demonstrate the utility of raising the standards both of character and education for admission to municipal suffrage, or which require longer local residence before the ballot is conceded

in cities. Such changes would be as salutary in diminishing the number of servile, fraudulent, and mercenary voters, as they would be in stimulating education, defeating frauds in registrations and elections, and increasing the dignity of the suffrage itself.

In Massachusetts a person who is a pauper or under guardianship cannot vote, nor can he unless he can read the state constitution in the English language, and can write his own name; and his vote will not be received at a city election unless he has resided one year in the state and six months in the city.[1] It is much to be regretted that these provisions are not in force in all the states.[2] The constitution of New York as amended, in 1894, though failing — apparently for party reasons — to provide for the least educational qualification, requires a period of ninety days, instead of ten days, as formerly, to intervene after naturalization before the privilege of voting is conceded. But, in strange contrast, it declares that no persons shall lose a residence for voting while confined in any public prison — a lamentable provision which we trust will yet give way to one providing that a person who has been confined in such prison shall not vote thereafter during a period at least equal to the length of his confinement.

In Missouri a foreigner who has resided in the state a year may vote, if in that period before an election he has declared his intention to become a citizen and has resided merely twenty days in the precinct where he offers to vote. How can citizens have an adequate sense of their duty as voters, or of the dignity of the franchise, when they see both laws and constitutions thus tender the high privilege of voting, not only to criminals and to the depraved classes, but to mere unassimilated city sojourners for a few weeks — to aliens possibly fresh from foreign prisons, and perhaps unable either to speak the language or read the laws of the state?

[1] Mass. Laws, 1893, Ch. 417, Sec. 13.

[2] We by no means despair of educational qualifications for suffrage. The state of California adopted it by a popular vote of more than three to one in 1892. *Mun. Prob.*, p. 147. It is also being favored by some of the Southern states.

2. The manner of executing the naturalization laws — for example, in New York City — seems to have been even more discreditable than their provisions. The address issued by the New York Constitutional Convention of 1894 declares that a single judge has naturalized persons at the rate of more than five hundred a day — many of them, we may add, being vile, ignorant, desperate creatures, most of whom party bribery, coercion, or fraud have brought before the court.[1]

Such is the genesis and character of the proceedings under which the national government may come under obligation to protect a so-called American citizen in every quarter of the globe. We have no right to expect good city government, nor shall we deserve its blessings, until we better protect the dignity and purity of the franchise, and cease to allow it to be made the spoils of party managers and the favor of unfaithful and partisan judges. Who can doubt that, if mere party influence could be expelled from New York City, the standard for voting could be at once raised as high as it is in Massachusetts? Her judges are appointed and hold their offices during good behavior and efficiency.

Better influences are now (1897) prevailing in New York City, and the power of an aroused public opinion defeats many unfit applicants for naturalization. Yet we need a stringent statute for securing publicity — such as we have just explained — under which unfaithful judges can be examined and exposed.

3. Formal applications for naturalization should be required to be filed at least thirty days before the right of voting can be granted. Special sessions of the court should be set apart, and formal proceedings should be prescribed

[1] Mr. Conkling (*City Govt.*, p. 196), calling attention to the fact that in Tweed's time (1870) persons were naturalized at the rate of three in five minutes, says that in 1893 he saw a judge in New York City "admit three applicants to citizenship in just three minutes and that the answers given to questions in American history and geography were ludicrous." But can a judge who has paid his party $15,000 for his nomination be expected to do much better than this when its leaders bring before him the vile wretches they have bribed or hustled from the bar of the grog-shop to the bar of justice?

for naturalizations, of which full records should be kept. Mr. Conkling justly thinks that, to keep the matter out of partisan strife at the period of elections, no one should be allowed to vote under naturalization proceedings which have not been completed six months before the election. The failure of a few foreigners to vote — the defeat of a few colonized voters to carry a district — would be the merest trifle compared with the general demoralization and the stupendous frauds which our vicious methods have caused. Naturalization proceedings should be without reference to any particular election, and the conclusion reached should be duly registered in permanent books, which should be the primary evidence of citizenship. In view of the facts already stated, it seems important that no party boss, leader, or agent should have any recognized privilege, or be allowed any participation in connection with the naturalization of foreigners.

4. The matter of registration is closely connected with that of naturalization, and what has been said concerning the latter is in the main applicable to the former. The statutes of Massachusetts last cited[1] contain provisions which may be usefully studied by all friends of municipal reform. They provide for a permanent registration board, and for the keeping of a general register of all voters, which is to be as complete as practicable at all times, so that in case of local or special elections the facts appearing on the general register can be used. There are also valuable provisions for identifying the registered voters. Such provisions cannot fail to make it much easier than it had before been to prevent those many registration frauds which are inevitable under laws which allow the registrations to be hurriedly made under great party excitement, in the very few days which immediately precede the elections.

5. We have called attention to the fact that by far the greater part of the registration frauds, and of the bribery connected with them, have resulted from the use of money

[1] Laws, 1893, Chs. 413 and 417, Secs. 15 and 36–47.

raised by parties, and from the vicious exertions of their leaders and minions for bringing vile voters to the polls. Therefore, in the degree that we shall suppress party government in municipalities we shall also suppress these evils.

It is plain that if city officers were elected in the main by the city at large, as they should be, rather than from small districts, many of the complications and vicious facilities attending registration, and most of the fraudulent colonizations of voters from one district to another, would be avoided. In New York City, the required residence of thirty days in a district as a condition of voting would be rendered useless — the city residence being sufficient; and it might be made easily practicable to require the registration to be mainly completed at least a month before an election. The few honest voters who would be thus excluded from the registry might be allowed to vote by virtue of their state and country residence, for the proceeding part of the year. When city government shall be framed in the interest of the people, rather than in that of parties and professional politicians, we may feel sure that registration will be much more carefully guarded, and that it will be completed early enough to allow ample time for the correction of the voting-lists.

6. So long as parties shall be allowed to control nominations, and the party system shall prevail in cities, the subject of party enrolment and primaries will remain important, and the need of greatly improving their vicious methods will continue. The movement for ballot reform has been, in large part, an effort to suppress the evils incident to the party system and party control of voting, to which enrolments are incidents. As we shall have to consider these matters elsewhere, little need be said here concerning them. As our cities have increased in population, the management of party primaries and conventions has become more and more despotic and corrupt, and the necessity of regulating their action by law and of limiting it to regular and honest methods has been recognized.[1]

[1] Though it has been but a few years since the first laws were enacted upon the

V

1. In considering our remedial suggestions, it has very likely occurred to the reader that remedies of great importance have been unnoticed — the duty of all citizens, (1) to promote the acceptance of sound principle; (2) to be active in securing good nominations; (3) to vote, and persuade other citizens to vote. These duties are so obvious as to need no demonstration, and their neglect is both lamentable and ominous. We need a patriotic and stern public opinion which shall make all intelligent citizens infamous who neglect these universal obligations of good citizenship. We must think it would not be unjust to disfranchise for a short time, to make ineligible to office for a much longer time, and to designate on the general voting registers, the legal voters who habitually, and without good reasons assigned, neglect to vote — whatever view we may take of the policy of compulsory voting as a general rule. Can it be doubted that if every neglect to vote was recorded on a register many more respectable voters would go to the polls than now go there?[1]

2. If the omission to take part in primary nominations and to vote occurred under an election system which did not

subject, legislation affecting it has already become complicated in several states, and the difficulty of securing honest proceedings and fair nominations seems to be almost insurmountable. See "Primary Elections," 3 Lalor's *Pol. Sci.*, p. 343. Some of the best legislation on the subject may be found in the laws of Massachusetts. Laws, 1893, Ch. 417. We shall dispose of this subject by presenting a method of making free nominations by certificate. See Ch. IX.

[1] Hon. F. W. Holls, a member of the New York Constitutional Convention of 1894, has written an able and interesting pamphlet on compulsory voting. That such compulsion would secure some useful results can hardly be doubted. Men fit to vote might with advantage be compelled to vote. But until the standard for suffrage is made so high as not to put upon the voting lists the vilest citizens, the wisdom of compelling all to vote who have a legal right to do so may well be doubted. To force all those abominable specimens of human nature — whom parties and their leaders generally bribe and hustle to register themselves — to actually vote, would be a curse to any city, and a disgusting burlesque on republican government. It would be better to fine the low politicians and party leaders who caused them to register, and to use the money thus collected to reward the vile voters who should have the shame and decency to keep away from the polls.

— as is in the case with the prevailing systems — call for a needless number of nominations and elections, these neglects would be far more serious than they now seem to be. We may well believe that the excessive number of nominations and elections we now have tire, disgust, and repel many voters who would, nevertheless, be ready to discharge all the duties which a wisely constructed, non-partisan municipal system would impose. Suppose our official terms were only six months, how many besides politicians and those they had bribed would attend the primaries or vote? Yet, bad as are the methods of our primaries and conventions, there can be no doubt that their doings would be much improved if all, save the worst, citizens would discharge their duty by taking part in their proceedings. We are far from justifying — we emphatically condemn — those who for such reasons shirk their civil duties, but we must regard the fact that they habitually do so as one of our fundamental municipal problems, which we shall consider in the next chapter. We think it can be shown that many men, who for the reasons indicated neglect their duty, may be persuaded to fairly discharge it, through better methods and under less exacting conditions. They refuse all exertions when needless demands are made upon them. When they are invited to many needless elections, find that frauds go unpunished, and are compelled to hustle with partisan bullies and vile, bribed voters, in order to secure the nomination of worthy candidates, they retire in disgust from the contest. Hence the great importance of getting along with fewer elected officers, less frequent elections, and with much simpler methods of making nominations. We shall, therefore, invite the attention of the reader to some novel suggestions on these subjects.

VI

We have considered certain evils incident to the small district system, but there are others which require notice.

It is a fundamental need that an elected officer should represent definite interests and principles in which those

who vote at his election should have a common interest, and to which he may feel an effective obligation of duty. In such conditions we have the basis of all official responsibility, and of that salutary and effective sense of amenability which does most to keep the officer in the line of his duty, and to prevent patronage, spoils, and blind party spirit dominating his conduct. Towns and combinations of towns into districts have definite, local interests growing out of their peculiar products, general corporate welfare, and geographical relations. The residents of towns constitute a corporate body, having governmental functions, including the power of taxation; they are accustomed to meet and act together, and to seek legislation adapted to their peculiar interests. They know their representatives and require them to be faithful to their local needs. Here are the elements of an effective sense of official responsibility — much as party discipline impairs its force.

So in the main it may be in a small city so long as a single officer, or a class of officers, are elected at large and represent the whole city.

But when the city is divided up into districts for electing members of the city council or of the legislature — not because different local interests or new geographical policies or productions have been developed, but merely because the city has become entitled to more elected officers, the whole situation — so far as the reality of representation and a sense of responsibility are concerned — is changed. The local election districts — there are (in 1897) thirty-five of them in New York City for electing members of the State Assembly and city aldermen — are created rather to serve an arithmetical convenience than to secure an actual representation of classes, distinctive industries, or local needs. These districts are based on the mere contiguity of the voters' residences, if happily the gerrymandering policy of parties and factions does not dictate their boundaries.

The limits of these districts, which are often changed, are certain streets or lines of buildings enclosing a population which forms no natural or useful basis for a separate repre-

sentation. In the main the voters of a district are strangers to each other, have no interests or sympathies in common, and many of them live in one district and carry on business in another. Who can say in which they should most properly vote?[1] These district residents have no peculiar interests or corporate relations; they almost never meet as a body to instruct their representative or to call him to account.

When he rises to speak in a legislative body he can hardly feel that he represents anything definite, save a party, a faction, or a boss. In fact, the residents of these small districts, under the party system, do not so much nominate the officer they elect as accept him at the hands of the central party organization, which, as we have seen, generally dominates every district. It is obvious that such a pseudo-representative cannot feel the wholesome or effective sense of responsibility — the dread of being justly rebuked by his constituents — which is generally felt by the representatives of towns. He has probably made no pledge to be faithful to anything but the party, faction, or boss which dictated his nomination — or sold it to him.

It would hardly be possible to contrive any method more effective for depriving formal representation of its reality, its dignity, and its most salutary admonitions. The facts that little-district members of legislatures and of city councils are so generally little, contemptible politicians, with little sense of municipal duty, are but natural results from central party domination and the little-district system. Hardly any representative of the great city is authorized to speak for it as a whole — of its dignity, of its combined interests, of its large policy — even if he were competent.[2]

[1] In some large cities there may be certain peculiar interests so situated geographically as to be a fair basis for a geographical or local representation.

[2] Mr. Graham, in his *New York City and Its Masters*, showed that in the first district of New York City for electing members of the legislature in 1887, there was a saloon for every 41 of its residents, that in the second district there was a saloon for every 94 of its residents, that in the third district there was a saloon for every 136 of its residents; and that in the three districts there were 1951 drinking-saloons and only 17 schools. We hardly need add that the character and intelli-

Little districts not only aid little men to office, but cause great men to scorn it. An election on a general ticket by all the voters of a great city would impose a duty to act broadly for its general welfare, would give a dignity to the representative office which would appeal to the honorable ambition of men of character and capacity. It can hardly be said that the strong tendency of elections at large to secure the choice of officers of high ability and character would always accomplish that result. For Tammany, under the lead of Tweed, elected a despicable board of aldermen on general ticket. But that was a time of unexampled degradation. Minority representation is needed to reënforce that tendency—a subject which we shall soon consider.

No candid man will deny that an election contest in a little fraction, or district, of a city—so many blocks of houses, shops, and stables—naturally repels worthy candidates and favors the triumph of intrigue, fraud, and pestilent, partisan politics. Adroit and unscrupulous little politicians of tarnished reputations, who would have small chance of election on a general ticket, may, by secret, crafty management—supported by the central party organization—easily secure a victory in one of these little districts. Who can doubt that if the assembly and aldermanic districts in cities were reduced to a fifth of their present size, the chances of yet more contemptible politicians and spoilsmen being elected would be greatly increased, while the party machine would become far more oppressive. The local clubs, leaders, captains, lieutenants, aides, and all the electioneering swashbucklers of the ruling city parties would be more effective and pernicious than ever before.

It seems almost too plain for doubt that if city candidates for the legislature and for city councils had to make their appeals to the whole body of city voters for support, and in some reference to their own fitness to act for the whole city, the consequences would be highly favorable to the triumph

gence of their elected officers—far baser than would be nominated on a general ticket—have usually represented the ignorant and degraded moral conditions which such facts suggest.

of public opinion and to the nomination and election of men of good ability and reputation, generally known throughout the city.

The one patriotic objection of any weight to abolishing small districts for representation, or reducing them to three or four in the largest cities — being the claim that small districts favor the representation of the minority — will be considered in the next chapter, where we shall propose a far more effective and just method of minority representation.

CHAPTER IX. — CONCERNING FREE NOMINATIONS AND FREE VOTING; MINORITY REPRESENTATION

When parties may justly make nominations. The true function of nominations. Parties attempt to make them decisive of elections. Ballot reform affirms the principle of Free Nominations. Meaning of Free Nominations. Laws of Massachusetts and New York for Free Nominations. New York laws unjust to independent voters. Nominations by Free Nomination certificates sufficient and just, and would diminish corruption. Many signers to certificate nominations needless. Utility of such nominations. Free Nominations in England salutary. Often no opposing candidates in English cities and then a nomination is by law equivalent to an election. More limited suffrage in England as affecting Free Voting. The wider the suffrage the greater the need of Free Nominations. As to danger of too many nominations. Precautions against them.

Free Voting in city elections. It is a right. Party theory of voting. Why it is unjust. Party voting and Free Voting compared. Free Voting and limited voting compared. Proportional Representation, Minority Representation, and Cumulative Voting more complicated and difficult than Free Voting. Free Voting has a peculiar purpose of its own. Free Voting is always an absolute need. How far it can give minority representation. Good results from Free Voting. Free Voting by business corporations. Free Voting provided for in Illinois constitution. Its practical effect. Objections to Free Voting considered. "Plumping." Politics in Illinois and adjoining states compared. Attempt to establish Free Voting in New York in 1872. Laws of Pennsylvania as to Free Voting. Their practical effects. How the triumph of the spoils system in Pennsylvania caused repeal of most of the Free Voting laws. Examples and good results of Free Voting in the School Boards in English cities. Examples of party voting in American cities. Free Voting would make it much easier to secure party support for non-partisan city administration.

WHAT the party boss, managers, and machines have gained by aggression and usurpation in city politics, the individual citizens have lost, being parts of their just independence. The growing despotism of the former measure the increased vassalage of the latter. Nowhere are this gain and loss more conspicuous and disastrous than in the sphere of making nominations, which we are now to consider.

1. We have seen that there is a natural basis, so far as state and national affairs are concerned, for legitimate and useful political parties. When these parties are faithful and really representative, there is an obvious fitness in their conventions making nominations for state and national offi-

cers. Nevertheless, so perverse and despotic is party spirit that it will always be essential, not only in the interest of justice and liberty, but of fidelity and usefulness on the part of parties themselves, that independent citizens shall at all times be able to nominate for state officers candidates for whom they can conscientiously vote, whether these candidates are approved by parties or not.

When we come to the elections of officers for managing city affairs,— in which, as we have seen, there is no natural basis for useful party action,— the case is widely different. There is no just basis for allowing parties to control their nominations, but a manifest need of enabling all citizens to freely exert their influence both as to nominations and elections, irrespective of party relations and interests. We have allowed the development of so haughty a despotism on the part of parties that their majorities now claim a right to dictate all the nominations, and very largely the votes of their adherents. What should be represented by the candidates in the city elections of city officers is neither parties nor factions nor party principles, but the public opinion, policy, and interests of the city and its residents concerning their own affairs, regardless of party affiliations. This true representation can be secured only by means that shall prevent coercion by party managers and majorities, and give the people a real freedom in the nomination and election of their city officers.[1]

II. *Free Nominations*

1. A few words will be useful concerning the essential function of nominations and the condition and nature of a real freedom in voting; for these matters have been lamentably neglected and misconceived. The paramount function of a true party, aside from its educational efforts, is to com-

[1] In a legal sense, under some charters and constitutions, the phrase "city officers" would not include members of state legislatures elected in cities. Such members, though directly representing city interests, — which are non-partisan, — must nevertheless sometimes act in reference to the political interests of the state and the nation.

bine and give an effective expression to the opinions and interests of those having convictions and purposes in common. Party action is a facility for a free and effective action, in the way of voting, on the part of those who have the same interests and purposes. But for a party to use its power to prevent its own most independent and conscientious adherents, or any other citizens, from having a perfect freedom and facility of voting for those whom they prefer is to pervert party into a conspiracy and a despotism. No party can justly use its power to compel one of its own adherents to vote for a candidate he disapproves. It is no legitimate function of a party to coerce voters by controlling nominations. It is an utter perversion of its power for a party to attempt to compel a voter to support any person for office, save by appeals to his reason and his sense of duty. Civil Service reform, Ballot reform, Corrupt Practice reform, and Free Nominations have a common purpose to restrain parties within their legitimate functions and to prevent party tyranny.

The paramount aim in making nominations should be to enable as many citizens as possible to vote for candidates whom they approve, and who fairly represent their convictions and interests ; and there is a plain duty on the part of every government to facilitate to the utmost the making of such nominations. No political right is clearer than that of all citizens to freely nominate such candidates as they prefer.

Every voter should be the sole judge for himself as to how far it is a patriotic duty for him — and there may be such a duty — to coöperate with others in elections. Yet city parties quite generally, and their managers and leaders almost constantly, seek not only to make nominations decisive of elections, but to deprive the citizens of all real liberty to vote effectively for any other candidates save those which these parties impose upon them.[1]

[1] We may yet find it necessary to make it a criminal offence for party managers to conspire in the use of party power for the suppression of free nominations. Why is not coercive action — any conspiracy — against the freedom of

The opposition which party managers and bosses have made to ballot reform and nominations by certificate has been mainly because these reforms have facilitated conscientious and independent citizens in making free and effective nominations without the consent of the politicians.

2. It is a familiar fact that since public opinion has compelled the recognition of the legality of nominations made outside of party caucuses and conventions,— nominations by certificate,— party managers have done their utmost to make these free nominations as difficult and ineffective as possible. They have had as good reasons for opposing free nominations as the old slaveholders had for opposing voluntary emancipations,— they would be dangerous examples of freedom, which would endanger their own despotic power.

What can be, intrinsically, more indefensible and arrogant than the claim that because certain persons have agreed to act together as a party, and to call themselves such, they shall have a monopoly of making all nominations, whilst other citizens wishing to act and cast their ballots together shall have no right to make a nomination to suit themselves? The adherents of parties can, manifestly, have no more exclusive right — no more monopoly — of making all nominations, than they can have of doing all the voting or of holding all the offices.

The prostitution of party power involved in the exercise of the monopoly of making nominations has degraded our municipal politics and developed a spirit of feudal vassalage on the part of a vast number of blind and prejudiced city partisans. How potential, profitable, and corrupting is this monopoly, and how largely it operates as a coercion, is shown by the facts we have considered, — the open and shameless sale of the most important city nominations at the rate of from $5000 to $15,000 as the market price of each.[1] It is no wonder that city parties and their

nominations as legitimately punishable as analogous action against the freedom of trade?

[1] See Chs. V. and VI.

managers oppose free nominations, which would suppress so profitable a business.

It seems almost an affront to intelligent readers to treat it as an open question whether this party monopoly should continue. Imagine the incommensurable audacity of party managers in first refusing to independent and conscientious voters a practicable method of making nominations which they can honestly support, and then putting all the party-made nominations on the market for money to be used by themselves and their party to bribe voters and fill their own pockets. It is not easy to say which is the more disgraceful to a city or more dangerous to republican institutions, the suppression of Free nominations, or the making of merchandise out of the sale of party-made nominations.

III

From principles let us turn to precedents. Just as the chief purposes of civil service reform and corrupt practice reform were to put worthy men into office and deprive parties of the vast and degrading power derived from patronage and political assessments, so the chief purposes of ballot reform were to suppress the despotic and corrupting power of parties and bosses over nominations, voting, and elections, and thus secure for the most independent and conscientious citizens a real freedom for nominating the best candidates and combining their votes for their support. Free Nominations are an extension of the methods and purposes of all those reforms.[1]

Before the enactment of our first ballot reform law in 1888 there was but a half-developed conception of such a freedom in the American mind, and it was almost unimaginable on the part of mere partisans and politicians.[2]

[1] We call the method we propose for making nominations Free Nominations, because it would largely emancipate the citizen from party dependence, and restore to him a freedom to nominate which every citizen had before any party was formed, and which would remain if every party should disband. It is a freedom which every citizen had in the primitive town-meeting.

[2] The first ballot reform law in this country was enacted in Massachusetts in

The practicability and justice of making nominations otherwise than by the action of party primaries and conventions have been but little considered, and are not yet generally comprehended in partisan circles, so that an exposition of the principles already established by law may be a surprise to many. The laws of Massachusetts and New York may serve as illustrations. That of the former state,[1] after elaborate provisions for preventing fraudulent nominations in party caucuses and conventions, provides for free nominations to be made by mere certificates signed by individuals, regardless of any party authorization. One thousand qualified voters, by signing a certificate and conforming to some other easy conditions, may make a regular nomination for any office to be filled by the voters of the state at large; and a number of voters — provided not less than fifty in all — equal to one in a hundred of all the voters in a city, or city district, who voted for governor at the last election, may make a nomination of candidates for officers for such city or district by signing a certificate and conforming to such conditions. Similar provisions extend to town elections. The effect in Massachusetts of thus making independent nomination by certificates has been highly salutary, resulting in defeating bad and unfair nominations, mere machine candidates, and corrupt practices.[2] "Numerous members of the state legislature, of both Senate and House, have been nominated and elected under this system after defeating candidates nominated through the party machine methods. . . . Some cities have some years had all the nominations for municipal offices made under this system. . . ."[3]

1888, and the second in New York in 1890. Richard H. Dana, of Boston, and Horace E. Deming, of New York, acted leading parts in securing these valuable laws. The reform policy thus established has already extended over the Union, and is a striking example of the rapidity with which a wise movement may triumph.

[1] Mass. Laws, 1893, Ch. 417, Secs. 71–77; and Mass. Laws, 1896, Ch. 469.

[2] In 1894, this method of making nominations was extended to the election of party delegates to conventions. Mass. Laws, 1894, Ch. 503, Sec. 15; Mass. Laws, 1897, Ch. 530.

[3] Letter, Richard H. Dana, Esq., to author. No one is more competent than Mr. Dana to speak on this subject.

The laws of New York[1] contain provisions analogous to those in the laws of Massachusetts; but to make an independent nomination, at least three thousand signers of a certificate are required in case of offices to be filled by the voters of the entire state; five hundred voters are required to sign a certificate in case of offices to be filled by the vote of a city; two hundred and fifty voters are required to sign in the case of offices to be filled by the voters of a school-commission district; only twenty-five voters of a ward, town, or village are required to sign the certificate to make a valid nomination for an office to be filled by the voters thereof. But if an office is to be filled by the voters of the city and county of New York, or of Kings County, or the city of Brooklyn, the certificate must be signed by six hundred voters.

We have no space for explaining the elaborate provisions which regulate these nominations. The important facts are that the legal sufficiency of nominations by certificate is established, that the practicability of so making them is demonstrated, that party intervention in the matter is shown to be unnecessary, and that the complications and frauds which the system of party primaries causes in cities may be suppressed.[2]

Since the foregoing was written, the New York legislature of 1896, a body remarkable for its servile party spirit and its unprecedented vassalage to the party machine and the state boss, has amended the law of 1895[3] by greatly increasing — in several cases more than doubling — the number of signers required to make a certificate of nomination. Not only are six thousand instead of three thousand signers

[1] Laws, 1895, Vol. I. Ch. 810, Secs. 56 and 57.

[2] It is noticeable that a much larger number of signers is required upon the New York certificates than upon those of Massachusetts, thus making independent nomination more difficult in the former state than in the latter, — facts which will not surprise those who remember that only the former state has a boss, and that the party management of New York has long been more despotic and corrupt than that of Massachusetts. The law of New York provides for voting a whole party ticket by making a single cross, but that of Massachusetts does not allow this.

[3] See Laws, 1896, Ch. 909, Secs. 56, 57.

required to make a nomination for the whole state, but among them there must be fifty signers from each county but two. The object was apparently to make independent nominations more difficult and expensive, while the making of nominations through certificates signed by the officers or committees of the regular parties and primaries was facilitated. Yet these more restricted opportunities allowed by the law of 1896 are not available to a party, even in town, village, or city elections, that did not cast ten thousand votes for a candidate for governor the year before. Candidates for municipal offices to be voted for by the whole of cities of the first class can only be nominated by certificates signed by two thousand voters.

These needless restrictions upon the freedom of nominations show a purpose on the part of the managers of the great parties to retain the monopoly of making nominations to the utmost, and to use party power to suppress the independence of the individual voter.

Unless party despotism is to surpass all precedent, we must think the question of Free Nominations will soon become a great issue in American politics. The largest practical freedom in naming candidates is essential to political liberty and the suppression of the boss system. Neither any sound policy nor any practical difficulty in enforcing the New York law of 1895 called for the change made in 1896. Apparently the party managers and the state boss had become alarmed at the possible effect of even a moderate measure of Free Nominations, and they resolved to suppress them to the utmost, before their great contribution to free and non-partisan voting should be demonstrated.

2. It hardly need be said that nominations made by mere certificates are for all legal purposes just as effective as those made by parties. Indeed, even the party nominations in New York must now be made by a formal certificate under the law of 1896. The great principle thus proclaimed by these leading states — though by no means carried to its full logical results — can be as easily comprehended as the necessity which compelled its establishment. There had long

been a movement, of constantly increasing force, which refused to submit to a partisan monopoly of nominations. In yielding to it, these laws in substance declare: (1) That the old party monopoly of nominations — to be made in conventions — is indefensible and vicious; and (2) that it is a duty to facilitate a kind of nomination through which independents and voters of all parties can unite in freely presenting a candidate of their choice.

3. On the score of principle there is no good reason why all municipal nominations should not be required to be made by certificate alone. It is obvious that parties, as well as citizens belonging to different parties who wish to unite ther efforts, can make their nominations by certificate. We should then be rid of all legal questions as to the regularity of primary and convention nominations, and most of the endless cheating, bribery, and corruption which attend them. The great loss which the change would involve would be that of the profits and power springing from the party control of the primaries and a probable fall in the market price on the sale of party nominations.

4. It is desirable to have a clear view of the fact — which we shall demonstrate from experience — that neither the sufficiency nor the utility of nominations by certificates depends upon their having a large number of signers. Indeed, there would be some great advantages in having city candidates come before the voters upon their character and capacity alone. Yet a certificate signed by a few well-known and highly esteemed citizens would be not only a basis for confidence, but a legitimate advantage in every way. A small number of signers — say from twenty to two hundred — would answer every legitimate purpose, the number varying according to the extent of the jurisdiction to be represented. No more than the required number of signers should be allowed upon any certificate, so as to exclude a practice of seeking influence from mere numbers. The law should not take, nor allow the election officials to take, any notice of any nominations save those made by regular certificates.[1]

[1] Of course, after the nomination has been made complete by the certificates,

5. Few changes are more needed in our municipal methods than those which will make high character, capacity, and good reputation potential, and diminish the power of mere organization, numbers, and partisan machinations. The moment parties lose their monopoly of making municipal nominations in the old way, and are compelled to make them by the same means which are open to all citizens, they will lose much of their power and prestige. No one could have any part in making nominations under the old party system who was not a regular member of a primary. To become a member, the citizen had to surrender a large part of his independence. He must promise to support all regular nominations and all party platforms. As a rule only from a sixth to a tenth of the voters have been willing to consent to make that surrender. Hence the nominations have generally been made by the most servile and intense partisans, who find their pecuniary advantage in being active in primary management. This management has naturally become a profitable trade.[1] Hardly any facts in municipal party domination are of more profound significance than these.

6. Free municipal nominations by certificate would soon cause the people to see how utterly untenable is the theory that city parties are essential for nominating city candidates; after which the inflated claims made to the effect that the partisans who work the nominating machinery are rendering a necessary and highly patriotic service would soon become ridiculous. The ability to make free, non-partisan nominations will obviously add much not only to the power of public opinion, but to the effective influence of independent and conscientious voters. The boss and the operators of the party machinery will see a much greater need of conciliating these voters, for they can no longer say to the

any number of citizens or any party can declare in the public journals or in public meetings their purpose to support it. Yet the hostility of all mercenary party schemers to these free, certificate nominations shows how dangerous they feel them to be to the profitable party monopoly and despotism under our nominating system.

[1] 3 Lalor's *Cyclo. Pol. Sci.*, pp. 343–350.

latter, and to all honorable aspirants for office, "You cannot even have a nomination until you have paid our price for it." Can good citizens much lament if a large part of the activity of city primaries — that in which little besides pestilent dealing in city nominations, patronage, and spoils takes place — shall cease? Who will think it a public detriment if much of the low code governing regularity of city nominations, and the whole band of vicious practitioners under it, shall be superseded? There is hardly any imaginable way in which a few citizens, greatly esteemed by the community, and consequently of great influence, can exert a more salutary power in city elections than by inducing the men most fit for offices to accept nominations by certificate at their hands. It would be a noble change to have nominations made on the heights rather than in the slums of municipal life.

IV

1. The reasons in favor of Free Nominations are not confined to the limited experience of this country. The question as to the best method of making them has received long and thoughtful consideration in Great Britain, and very decisive results have been reached. We may study her experience with great advantage, though we should solve our problems in the spirit of our own constitutions and social life.[1] Municipal nominations for elections by the people of members of city councils, under the English system, are made only by official papers called voting papers, in a manner analogous to the provisions of the laws of Massachusetts and New York just cited, though by a method much more simple and convenient. At the time fixed by law, before such elections, the proper city officer publishes an official notice designating the offices to be filled, for which nominations must be made. To make such a nomination, nothing more is required than that ten competent voters shall sign

[1] It seems that a system of Free Nominations and Free Voting was first proposed in the United States. Buckalew's *Proportional Representation*, pp. 166, 167, 263.

the formal nominating paper in the prescribed manner, and cause its delivery to such officer for publication by him within the time and in the manner required by law. Any number of such nominations may be so made.[1] The proper public officers make due publication of these nominations, and place the names of the nominees on the balloting papers. The general expenses of the election are a public charge, as every consideration of justice and wisdom require they should be. The old theory that a city election is a party affair has been discarded in England. No party or party manager, as such, has any necessary or legitimate relations with the subject, or seems to be recognized in connection with it. The whole machinery of party caucuses, primaries, and conventions is ignored. The voter marks on the papers the candidates for whom his ballot is to be counted.[2]

If no more candidates are nominated than there are officers to be elected,— that is, where there are no opposing candidates,— *the nomination is by law made equivalent to an election, and no actual vote is taken.* This is frequently the fact, strange as it may seem to American politicians, and it is a part of the salutary results of the triumph of non-partisan city methods over the city-party system in English cities.[3]

2. In considering non-partisan government theoretically, we called attention to its natural tendency to suppress mere partisan contention in city elections and to make public opinion rather than party opinion controlling. In Great Britain this tendency has been demonstrated by long experience, there having been an increasing number of voting districts, in which, to use the words of Dr. Shaw, "public opinion had in advance agreed so decisively upon a particular man that nobody was nominated against him, and the entire expense and distraction of a contest at the

[1] An individual voter may practically put himself in nomination — he, like the others, being liable to pay his share of the expense of printing the votes. Goodnow's *Mun. Prob.*, p. 213.

[2] English Laws, 1882, Ch. 50, pp. 220, 288, 289; Shaw's *Mun. Gov. G. B.*, pp. 33, 46-59, 245, 236, 237.

[3] Shaw's *Mun. Gov. G. B.*, p. 245.

polls was thus obviated." In the twenty-five wards of Manchester, for example, in 1894, there were only seventeen contests, that is, actual elections; and in Birmingham, in the same year, there were contests in only six of its eighteen wards; and when in Liverpool there was an unusual display of party spirit, there were contests in only twelve of its sixteen wards. In England in 1893 there were, altogether, no less than fifty cities[1] in which, strange as it may seem to us, there were no actual election contests, — public opinion having not only made the nominations but superseded the need of any actual voting.

3. Here, certainly, is city government pretty effectively taken out of party politics, partisan contention having been suppressed by public opinion and a just method of non-partisan nominations. Lest many party men among us may find it very difficult to believe these facts, we may say that we shall soon show that an election of members of a city council in England involves the distribution of almost no patronage or spoils, — as an election should not in American cities. We have elsewhere shown that English cities were formerly as much involved in partisan contention, despotism, and corruption as American cities now are.[2] It will elsewhere appear that this method of Free Nominations has greatly aided in securing municipal officers in Great Britain who are much superior to those generally chosen in American cities.[3] It is thus demonstrated, by the experience of the most practical of nations, that party nominations, or nominations according to party methods, for city officers are needless. Like the trial by jury, this experience is as available for the United States as for England.

4. But it is said that suffrage is broader in this country than in England, and that therefore we do not need, or cannot utilize, her experience. If it were said that, under a

[1] Cities seem to be frequently designated towns in English election laws and by English writers. Shaw's *Mun. Gov. G. B.*, p. 48.

[2] Speaking of municipal elections at present, Dr. Shaw says the "American primary election or party caucus system is quite unknown . . . in England." Shaw's *Mun. Gov. G. B.*, p. 51.

[3] See Ch. IX.

suffrage which includes the most of the utterly ignorant and the vile, it is more difficult to cure the evils at which Free Nominations are aimed, than it would be under a wisely limited franchise, few sensible persons would dispute the fact. But to say because there are a larger proportion of the ignorant, depraved, and criminal classes among the voters in the United States than there are in England, that therefore[1] we have no need, or less need, of Free Nominations, is one of the most absurd statements that shallow thinkers or besotted partisans have ever made. The greater the proportion of the voters who are unfit for the franchise, the greater is the need of simple, non-partisan nominations in order to increase the influence of the intelligent and conscientious vote, and to diminish to the utmost the effect of partisan machinations and mere brute numbers. What can be clearer than this: that if the privilege of voting were extended to the vilest of our disfranchised classes, to all prison inmates, to mere children, and to all alien residents, the need for Free Nominations would be all the greater; while that need would be much less if none could vote who have ever been convicted of crime or cannot read and write? Party despotism and all municipal evils increase with the degradation of the suffrage.

5. It was natural, when enacting the law for Free Nominations in England, that there should be some fear that an inconvenient number of candidates would be nominated. The law, therefore, provides precautions against such results. We have no space for details on the subject. It is enough that these provisions have been effective. The obligation, on certain conditions, to pay the expense of printing votes has been most effective in preventing an inconvenient number of nominations. There have been no serious difficulties by reason of too many of them.

Nevertheless, we may reasonably expect that, for a time, under Free Nominations, American politicians will unite their dishonest energies — and possibly with some tem-

[1] The ratio of the voters to the whole people in the United States and England seems to be about that of nine voters here to six there, in an equal population.

porary success — for the purpose of embarrassing the execution of such a system. But even if the government should be compelled for a time to print a needless number of votes, the trouble and expense would be but trifles compared with the vast good which would spring from such nominations. The enemies of the reform, as English experience shows, would soon see the folly of a practice which would be useless to them and would soon make them ridiculous. The best remedy for such abuses, so far as not found in the laws cited, is not by requiring many names on the nominating papers, — a condition with which parties and factions could most readily comply, — but in requiring those who make nominations to deposit money for the payment by themselves, in whole or in part, of the expenses of printing which their nomination makes necessary, in case their candidate shall fail to receive a number of votes equal to, say, a tenth of the largest number of votes cast for any of the candidates for offices to which they make nominations.[1]

6. The principle of Free Nominations, and the safeguards just mentioned against an excessive number of candidates, are already finding an auspicious support of a more liberal kind than the illustration we have cited from the laws of Massachusetts and New York.[2] A law of Missouri relating to primary elections allows any number of the electors, not less than twenty, upon depositing fifty dollars with the recorder of votes, to have placed upon the ballot a delegation selected by themselves; and any citizen may himself separately become a candidate by so depositing ten dollars.

[1] This cost of printing should, by general laws, be made definite for different classes of nominations and should not be so great as to unduly discourage the making of independent nominations in good faith. Candidates who after accepting a nomination should resign before election, might be required to pay some large part of the cost of the votes and printing they have made necessary. The candidate might be required, in accepting the nomination, to declare under oath his purpose to remain a candidate and to serve if elected. As a precaution against bad faith, those who sign a certificate of nomination might be required to state under oath that they believe their candidate to be worthy of the office for which he is proposed, that they intend to vote for him, and that they believe he will receive, say, at least one-fifth of the votes cast for the office. But these are only examples of various precautionary provisions easily made.

[2] Laws, Missouri, 1891, p. 137, Sec. 8.

The balance of the money so deposited, not required for the expenses of the election, is to be paid over to the school board. The latest election law of California[1] allows any person, or combination of persons, desiring to circulate and use a ticket at any election for selecting delegates to any political party convention, to do so at their own expense. These provisions are certainly in wide contrast with the late despotic statutes of New York, which seek to give to parties a practical monopoly of making nominations, and to suppress to the utmost the freedom of the voters.

V. *Free Voting*

1. From the need of freedom in nominating candidates, we naturally turn to the need of freedom in voting for them. The same reasons which have caused city parties to exert themselves for a monopoly in making nominations have also impelled them to do their utmost to suppress a real liberty in voting on the part of the independent and non-partisan citizens, who are unable to concentrate their full voting power in favor of the candidates they prefer. Between the electors and the exercise of the moral right of every citizen to cast his whole vote for any one or more candidates, parties and their managers have despotically interposed their mighty machinery for obstruction and coercion.

In what follows in this chapter we have special reference to the election of city and village officers, which legitimately involves no party issues; yet we shall show that Free Voting may with advantage be applied to the choice of city members of legislatures. We need to have clearly in mind some fundamental principles as to the right of voting. Though suffrage cannot be demanded as a natural right, but must be sought as a privilege to be allowed by the state, it ought to be conceded on a basis of common justice and equality, and to be allowed in a way that will most promote the general welfare.

The just claim for suffrage is an individual claim abso-

[1] Stat. of Cal., 1897, Ch. 104, Sec. 25.

lutely independent of all parties, — a claim which was complete before any party existed and would survive unimpaired if every party should be dissolved. Obviously, therefore, no combination, whether a little clique or a great party, can, as such, acquire any right to regulate or monopolize voting — any more than nominations — in its own interest, or to put any restraint upon the independent action of the individual. He has, if allowed the franchise, a moral right, and should be enabled, to cast a free and effective vote according to his own convictions of duty. Whatever obligation may rest upon him to coöperate with others for great principles, and thus gain the advantage of united efforts, is one of which he is the sole judge. Neither any other person nor any party can have any right to decide that matter for him.

2. The theories of voting upon which city parties and their devotees generally insist are these: (1) when a single officer is to be elected, each party should nominate a single candidate, and there should be no others; (2) each voter may cast a single ballot for one or another of these candidates, which should be that of his own party, thus not only leaving the minority practically unrepresented, but, as far as possible, depriving the individuals in the opposing party ranks, or in different districts, who may wish to unite their votes, of all opportunity of doing so;[1] (3) that when voting is to be in districts from which several officers are to be elected at the same time, parties insist not only that all the nominations shall be made by themselves, but that every voter should support all the candidates of some one of the parties. In this case, not only is all minority representation excluded, but it is, so far as practicable, made impossible for the voter to concentrate all his votes upon the best candidates he finds in nomination; in other words, he is practically refused a freedom of using his whole voting influence in favor of the candidate whom he knows to be the most worthy.

[1] Where the contests turn only on party principles, this method of voting has certain advantages, and need not materially impair a salutary freedom, but it is quite otherwise in municipal elections — and all others — where party principles are not involved.

By reason of this manner of voting, the citizen is compelled to vote for all of the candidates of one party, though he knows some of them to be unfit, and against all those of the other, though he knows most of them to be the best, — or a portion of his voting power must be lost. It is obvious that this party method is intended to limit the influence of the most independent and conscientious voters; while, on the other hand, the unscrupulous voters who support the party nominees, good or bad, are enabled to exercise their full voting power. Hence city parties and bosses naturally favor this method, and become through it more and more despotic and debased.

There is reason to fear, so strong and misleading are party theories and interests, that the conviction that the paramount purpose in voting at all should be to enable all citizens to freely and conscientiously vote according to their sense of duty has become greatly impaired in American cities.

3. There is, perhaps, some need of explaining what is meant by declaring that the voter should be enabled to concentrate his whole voting influence upon a less number than all of the candidates of the same kind to be voted for at the same time in the same district. Let us assume that three members of a board of aldermen or school trustees are to be elected in a single district at the same time. According to the strict party theory the voter should cast one ballot for or against all three of them; though, according to prevailing laws, he may cast one vote for a less number than all of them, — this being the extent of his freedom.

Now this party theory of voting is plainly the equivalent of casting three separate ballots, one for each of said candidates, and it is an admission that each voter may cast as many separate votes as there are separate candidates to be elected at the same time. If the voter disapproves of one of the candidates, he may, according to law, erase his name, and yet vote for the two others. Why should he not be allowed to insert a new name in place of the one erased? Why may he not, instead of new names, insert the name of the third

candidate in place of each of two names which he may have erased, and thus cast his three votes for the best candidate? Parties and mere politicians would refuse this liberty, for they would tell us, if they confessed the truth, that it would be the beginning of an independent action which would endanger their power and monopoly.

Finding one of these three candidates to be very good, and the others bad, the voter wishes to exert all of his voting power — to cast his three votes in this case — for the good candidate. Is it not a part of the just and salutary freedom of voting to allow him to do so? Will not its moral effect be good? What man or party has a right to dictate his choice in the matter? Every man who votes for three candidates contributes three votes to the mass to be counted. He who casts three votes for one candidate does no more. Therefore, by allowing him such liberty, his just franchise as a voter is not extended, but is simply respected, preserved, and made more effectual for good. It is only his just freedom which is enlarged, only his conscientious sense of duty which is recognized and favored. He is merely enabled to break through the restraints which parties and politicians, in the interest of their monopoly and usurpations, have imposed upon his freedom of choice.

That this freedom would invite conscientious voters to the polls, and would deepen the sense of the utility and responsibility of voting, would seem to be very clear. While to really open and candid minds these views may seem mere truisms requiring an apology for stating them, it is to be feared that most zealous partisans will regard them as the dreams of academic and impracticable radicalism.

4. It is desirable, at this point, to have a clear view of the fundamental difference between Free Voting and limited voting, the latter being that according to which the voter can cast ballots for only a less number of candidates than the whole to be elected at once. Free Voting respects the freedom and the independence of the voter, while limited voting impairs both. Free Voting restricts the control of the party majority, but limited voting invites and enables nomi-

nal party opponents to conspire together for joint control and the suppression of the independent voters.[1]

Under the methods of Free Voting, the candidates, up to the full number of offices to be filled, who receive the most votes should be held to be elected, even though some of them, by reason of others being much the most popular, shall have very few votes. The small number of the votes of the latter would not seem to be material except in a salutary way by diminishing their moral influence and by tending to dissuade unworthy men pushing for nominations.

5. It is worthy of notice that Free Voting, while in its main purpose having much in common with what has been designated Proportional Representation, Minority Representation, Personal Representation, and Cumulative Voting,[2]

[1] There have been laws in New York and several other states for limited voting. They are claimed to be in the interest of minority representation, but this is true only on the assumption that nothing but parties are to be represented, a result which mere politicians generally favor. Massachusetts has such a law applicable to the election of the members of the Boston City Council. In practice, it makes a party nomination almost the equivalent of an election. In choosing certain delegates to the New York Constitutional Convention of 1867, no voter was allowed to vote for more than sixteen out of the thirty-two to be chosen. In the same year, a law of England provided that where three members of parliament were to be elected from the same district, no elector should vote for more than two of them. Buckalew's *Proportional Representation*, pp. 41, 42, 93, 94. This is a very interesting and thoughtful volume, which deserves far more attention than it has received. Its author was a United States Senator from Pennsylvania who took a statesmanlike view of public questions.

[2] There is a considerable literature on these subjects. The writings of Mr. Mill and Mr. Hare have long been well known. Mr. Simon Sterne made a valuable report upon Personal Representation to the New York Constitutional Convention of 1867. One of the most interesting and valuable of the late works on these subjects is that of Professor Commons, published in 1896 and entitled *Proportional Representation*. There has been a Proportional Representation League in the United States which published a Review, and the number for December, 1893, contains a bibliography of those subjects. We are compelled to think that some of the writers upon those subjects with whose views we agree in the main have attempted a too complete, complicated, and theoretical representation of the minority for the beginning of a reform movement of the kind. This has naturally led to a diversity of opinion in their own ranks and to confusion and doubt in the public mind. That great good will finally spring from their efforts, we feel confident, yet we must think that some simple and limited illustrations of their theories, applied successfully in practical affairs, will be found essential to the early acceptance of their broader application in practice. The first stages of the advance of civil service reform justifies these views. The attempt to enforce it radically and comprehensively in 1870 and 1871 was a lamentable failure. It was the limited enforcement of the

has nevertheless distinctive principles and objects of its own which are less theoretical, more readily understood, and can be more easily carried into effect, than the methods and purposes generally included under either of those designations. When the fundamental principle of free voting has been vindicated in the public judgment, all that is most desirable in the methods of those reforms will follow in due time.

6. The paramount and distinctive purpose of Free Voting, and the claim of right and freedom on which it rests, cannot be too much emphasized. They would (1) give the voter a real freedom to vote according to his judgment and sense of duty; and (2) they would enable him, when several candidates are to be voted for at the same time, to concentrate all his votes, his whole voting influence, upon one or more of them as he chooses, whether they be only three or a larger number. Every one of the reforms just referred to, by whichever of the names designated, rests on this right and freedom, and all their complicated machinery is but an amplification of them. Those reforms will be distrusted and must fail, if this right and freedom are not vindicated, as the higher mathematics must be distrusted if the fundamental rules of arithmetic should be involved in doubt.

7. A fundamental purpose of all voting is to put the best men into office. The law cannot tell the citizen whom to vote for; it can only give him a real freedom of choice in bestowing his vote. He must exercise it freely, according to his judgment and conscience, for the accomplishment of that purpose. He must, therefore, be allowed to cumulate his votes or not cumulate them, to vote for minority representation or against it, as his own sense of duty shall dictate. Therefore neither cumulative voting nor proportional representation, however just and useful generally, can be regarded as ends which the law should primarily seek, the paramount

reform methods in 1883, under the law of that year, which led on to a constant and glorious success. The public mind needed to be educated by the practical lessons which the enforcement of examinations within a limited sphere, under this law, clearly taught.

end being a real and constant freedom in voting. Those methods are, in fact, but means through which the people, by the exercise of the right of free voting, may seek to promote the general welfare. Yet not always so. Why desire minority representation in cases where the candidates of the majority are good and those of the minority are bad? What sense in resorting to cumulative voting when all the candidates are equally worthy? Why insist on proportional representation in cases in which it would bring to the polls the depraved and criminal classes who ought never to have been allowed to vote at all? But in every conceivable condition it is primarily, ultimately, and absolutely true that free voting is both salutary and essential.[1]

8. In these considerations we can see that a preference for the phrase "Free Voting" over the other phrases referred to is not a mere matter of taste, but of substance. It is needful both to avoid misleading suggestions and to fix the attention upon great fundamental rights and purposes. Nor should we fail to see that the phrase is likely to appeal to the voters' love of liberty and right. Besides, while cumulative and proportional voting may seem mysterious to the simple-minded, every voter thinks it right that he should be allowed to bestow his votes as he pleases, and he cannot deny to other voters what he claims for himself. The name "Free Voting" is an argument in its own favor. Why not, then, begin non-partisan voting in our cities by a method absolutely just, descriptive, and persuasive in its very name, easily understood and established, and which not only avoids complicated questions which divide the friends of reform, but has successful precedents for its support, as we shall soon see.

9. Free Voting, by increasing the number of officers to be

[1] There is an objection to declaring for an exclusive personal representation in a fact which we shall set forth — the fact of a growing need for having cities themselves represented in legislatures by members whom the city councils, instead of the voters personally, shall elect. The incorporated municipal body should be represented in a legislature as a state is represented in the national Senate. But personal representation, in contradistinction of party representation or mere majority representation, is in the highest degree desirable in city affairs.

selected at the same time, can be made to secure almost any desirable amount of minority representation. The ballots can be readily cast by uneducated voters, and they can be easily counted without involving mystery or mathematical problems. The names of all candidates being printed upon the voting paper, all the voter has to do is to mark by a figure against the name of any candidate the number of his votes which he wishes counted for him. Mr. Buckalew, one of the ablest students of this class of subjects, — a man skilled in practical politics, who had been a United States Senator from Pennsylvania, — seems to have reached the same conclusions here expressed. He thought, as we do, that it would be a great gain for the cause of electoral reform if all its friends would unite in supporting the simple methods of Free Voting, leaving the more complete representation of the minority to be developed in the near future. The free vote, he says, "is more comprehensive and flexible than others, . . . and may be used to accomplish their objects. . . . It combines the advantages of other plans, without their imperfections, while it is not open to any strong objection peculiar to itself."[1]

10. Other good results seem likely to spring from Free Voting: (1) It would apparently in large measure suppress the profits of the corrupt trade of managing elections; for how can party nominations and the influence of party leaders command a high price in the markets of city politics when the conscientious voters have such facilities for secretly defeating the party nominees? (2) It would, apparently, for like reasons, much diminish party bribery, for the results of elections could no longer be calculated with sufficient certainty to justify large investments in the purchase of votes. (3) The minority, under Free Voting, can be represented to the extent due to its numbers, as the voters may determine by their ballots. When every voter can cast three ballots for the election of three officers, and bestow them as he pleases, one more than one-fourth of the electors will always be able to select any person in support of whom they may

[1] *Proportional Representation*, pp. 70–80.

unite. The greater the number of officers to be elected at the same time, the more complete will be minority representation under Free Voting.[1]

(4) It is obvious, when, by uniting as explained in the last note, a small proportion of the voters may elect men who truly represent them, that they may continue to reëlect them, thus causing great non-partisan interests to be effectively represented. These representatives will be independent, for no party managers can defeat them; the vote that elected them can reëlect them, continually.[2]

(5) It would be a great gain to have our legislative bodies made up of members who have independent convictions and who truly represent the diverse sentiments and interests of the community, rather than of a common type of mere partisans and politicians servile to the majority, who rarely engage in any instructive or patriotic debates. Our legislatures would no longer be bodies obedient to bosses or party managers. At a time when partisan servility and a lack of individual independence are notorious and lamentable faults of our legislators and city councils, any change which will give them more manhood and courage is obviously desirable.

(6) Another advantage of Free Voting, though by no means apparent at first, is yet important. While conferring upon every voter equal liberty and opportunity, it yet enables men of superior education, worth, and sagacity to make themselves increasingly effective through a union of efforts,

[1] The general rule, under Free Voting, is this: If two officers are to be elected at once in a district, any number of voters above one-third of the whole — though only one in excess of a third — may by uniting elect their candidate; if three officers are to be so elected, voters exceeding a fourth of the whole may by uniting elect their candidate; if five officers are to be so elected, voters exceeding a sixth of the whole may elect their candidate, etc., so that if nine officers are to be so elected at once, voters exceeding a tenth of all of them can elect their candidate. Buckalew's *Pro. Rep.*, p. 263.

[2] If by analogous Free Voting gamblers, burglars, bawdy-house, grog-shop-keepers, and all the criminal and vile classes shall be able to elect members of their kind, it will be a desirable result; for their representations would be infamous by reason of being well known and conspicuous. The poison of their influence would be less diffused through municipal politics, and hence less [illegible]ious.

for which they have the largest capacity. Such men could become more influential against mere numbers, in contending with stupidity, ignorance, and depravity under the lead of corrupt politicians and demagogues — a great advantage certainly under a system of universal suffrage. We should be glad that all the advantages which would accrue from this better utilization of superior intelligence and character would especially promote the welfare of the inferior and illiterate citizens.

VI

1. Let us now see how far our reasoning in favor of Free Voting has been justified by experience. It is familiar knowledge that some of the evils in our political elections, which have sprung from undue control by parties and selfish majorities, have also existed in connection with elections in our great business corporations. The large shareholders have dominated the small ones, the latter being unable to combine and elect an independent director who would expose the despotic schemes of the conspiring majority.

To remedy these evils, the constitution of Illinois, adopted in 1870,[1] provided in substance that every corporate shareholder might cast as many votes for directors as would be expressed by the number of directors to be elected at once multiplied by the number of shares the voter owns, and that he might give all his votes to one, two, or more candidates for election, distributing them at his pleasure according to the method of Free Voting as we have explained it. This constitution forbids such elections in any other way, and such has since remained the rule in Illinois, with advantage to the shareholders and the public. This provision has been adopted by other states.[2]

[1] Art. XIII. Sec. 3.

[2] West Virginia incorporated it into its constitution in 1872; the territory of Utah adopted the same principle in its proposed constitution of the same year. Buckalew's *Pro. Rep.*, pp. 226, 227. In 1873 a provision, closely analogous to the foregoing, was put into the constitution of Pennsylvania, and laws for carrying it into effect make it applicable to nearly every kind of corporation except municipal corporations. It is applied even to fire-engine companies in cities.

2. But the Illinois constitution of 1870 went much farther in establishing Free Voting.[1] It provided that three representatives in the lower house of the legislature shall be elected from each representative district for the term of two years, and in respect thereto used these words: "Each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same . . . among the candidates as he shall see fit, and the candidates highest in votes shall be declared elected." This provision was adopted by a large majority of the people on a separate ballot submitting it to them.[2] Districts for the elections of single representatives to the lower house were abolished. This is absolute Free Voting, — an American creation, — and it is, we believe, the first provision ever made in this country for its enforcement in the election of members of a legislative body.[3]

This Free Voting system has been since enforced in Illinois, and apparently with much advantage to the public interest. It has not only enlarged the freedom and independence of the voter, but has established the principle of minority representation, securing a measure of it in a form so simple as to exclude all mathematical complications. Every voter can at a glance understand it, and he can promptly and easily perform his part under it. What has been accomplished is indeed much short of an ideal or most desirable minority representation, yet it is a sound basis on which to build. It has established an essential and invaluable principle. It will aid in preparing the people for a more complete minority representation in the future.

Const., Penn., 1873, Art. XVI. Sec. 4; Laws, Penn., 1874, p. 79; 1876, pp. 47 and 49. One of these laws is a model by reason of its clear and comprehensive provisions. It should be studied by American legislators. In 1875, Missouri put these Illinois provisions into its constitution, and so has the state of Nebraska. Const., Nebraska, Art. XI. Sec. 5; Const., Missouri, Art. XII. Sec. 6. Altogether eleven states have already adopted this Illinois system. Commons's *Pro. Rep.*, 364.

[1] Art. IV. Secs. 7 and 8. Goodnow's *Mun. Prob.*, p. 154.

[2] Const., Art. IV. Secs. 7 and 8.

[3] Mr. Buckalew speaks of a plan of applying Free Voting to Nominations. Buckalew's *Pro. Rep.*, pp. 166, 167, 263. It might perhaps be applied for improving our system of making party nominations, but that is beyond the scope of our subject.

We cannot spare the space for adequate details as to the practical effects of Free Voting under this constitution, but the following conclusions, cited from a very competent writer who has recently investigated the subject, will suffice for our purpose.[1] He says: (1) Minority representation has been established; (2) every district of the state has been enabled to have the conflicting views of its interests actually represented — and, if need be, debated — in the legislature by members knowing the facts; (3) the misrepresentation and secrecy which existed under the old system as to local party interests have been made impracticable under Free Voting; (4) "it is an obstacle in the way of gerrymandering;" (5) it obviously makes legislation for mere party advantage vastly more difficult; (6) "it leads the people generally to take more interest in public affairs;" (7) "by dividing the people more equally and facilitating discussions, it causes more care in making laws."[2]

Far as the good effects of these limited experiments have fallen short of what the idealists naturally desire, we think that men of large experience in party politics will see in the results attained ample reasons for thinking that to establish and extend the Illinois system will be found much the easiest means of securing adequate minority representation.

As was natural to expect, party zealots and professional politicians, who detest minority representation, are hostile to the Illinois system; while persons who think that party domination should be checked take the opposite view, — except those radicals who will aid nothing less than ideal reforms at the outset.

3. The most important objection which has been urged by candid persons against Free Voting is that an undue

[1] M. N. Forney, Esq. His views of the subject appear in a small volume entitled *Political Reform*, etc., pp. 63 and 88. Mr. Forney has kindly read this chapter in manuscript.

[2] While Professor Goodnow has doubts as to the expediency of adopting the Illinois system, — apparently only because he thinks a more complete system in the same spirit is practicable, — yet he gives quite as strong reasons in favor of the Illinois experiment as those given by Mr. Forney. The worst results attributed to it seem to be far preferable to those from the party system. *Mun. Prob.*, pp. 155, 156.

cumulation of votes upon popular candidates may sometimes have the effect of limiting the representation of the majority. It is perhaps impossible to wholly avoid such results at the outset, without a resort to those complicated forms of voting to which we have referred, and which it is impossible to introduce until public opinion has been greatly enlightened. But these occasional results are at most only a very small measure of that injustice which constantly occurs under the party system of voting, under which little more than the majority is generally represented at all. Besides, experience has demonstrated that this evil of an excessive cumulation of votes is not practically of much importance. Mr. Forney shows that there was only one case of such cumulation in Illinois in 1892, and that there has hardly been more than three or four cases there in fifteen years.

The party system of voting leaves the minority in every separate district at all times wholly unrepresented. This excessive cumulation — sometimes called "plumping" — is on some grounds hardly a matter of regret. It demonstrates the complete independence of the voters which the system has secured. It can only happen when a very popular, worthy man is a candidate on the same side with one who is not much respected or is very inferior. The "plumping" of the vote on the former will tend to prevent the nomination of unworthy candidates and to make them shrink from accepting nominations. They will dread the ridicule of being thus disgracefully defeated.

The important fact should be repeated that whatever need there may be of superior intelligence and good judgment to avoid cumulating too many votes tends to increase the potential force of the highest class of voters, and is very unfavorable to the supremacy of the scheming little politicians and the stupid and depraved human brutes whom they hustle to the polls.

4. Several additional facts speak significantly concerning the effects of Free Voting in Illinois. Never since it was established has the state had a state boss or the repute of having one. Partisan gerrymandering, subsequent to the

establishment of Free Voting, has been of a much less aggravated kind in Illinois than that which has disgraced several states in her section of the Union. Examples of gerrymandering in Ohio, Indiana, and Wisconsin are selected by Professor Commons as the most extreme for the illustration of that abuse — that in Wisconsin having recently been declared unconstitutional by its highest court.[1] What more natural than that this evil should be found nearly impracticable in a legislature like that of Illinois, in which both parties are fairly represented? No senator has been elected in Illinois within the last twenty-five years whom any candid man would compare with a senator elected a few years ago in Ohio, or with the recent senators from New York or from Pennsylvania, — states in which the voting system is most partisan and despotic. It was not, therefore, an unnatural fact that Illinois — though Ohio is the older state — should be the first state in the West to adopt an enlightened civil service reform system by popular vote, though Cincinnati has been long cursed by a flagitious boss system. Nor, in view of such facts, is it any matter for surprise that in the same year in which the legislature of Illinois defeated her spoilsmen in an election of a United States Senator, the partisan and servile majority of the legislature of New York, rejecting a brilliant and admirable candidate, elected to the national Senate a notorious state boss. Nor has Pennsylvania done much better.

VII

Prior to 1872, the salutary effects of Free Voting in Illinois had attracted attention in the state of New York. The Republican party in the state had not yet been disgraced by accepting a boss. Its majority was sagacious enough to see that such voting would not only honor the party, but would be disastrous to the corrupt despotism of Tammany. In that year an act passed the legislature — in which the Republicans were in majority — which provided for the elec-

[1] *Pro. Rep.*, pp. 53, 54, 69.

tion of forty-five members of the Board of Aldermen of New York City, nine of them to be elected from each of five separate city districts. The vote for the aldermen was to be according to the method of Free Voting, each elector being allowed to cast nine votes and to bestow them as he should see fit for the nine aldermen from his district. The bill was defeated by the veto of Governor Hoffman, a favorite representative of Tammany, whose connections with certain scandalous Tammany naturalization proceedings are not yet forgotten. If this bill had become a law, it is very likely that New York would never have had a state boss. It is certain that the Republican boss system since developed, and its frequent alliances with Tammany, have been the greatest obstacles in the way of Free Voting and the overthrow of that organization. Such a system of representation applied to the election of members of the legislature from New York City would have given the Republicans the number due to their city vote.[1]

VIII

1. The laws of Pennsylvania furnish interesting examples of the methods of Free Voting, but our space will not allow us to trace their development.[2] The original and most striking law for distinctive Free Voting was that relating to elections in the borough or town of Bloomsburgh, enacted in 1870.[3] This unique law declares its object to be "that the electors of Bloomsburgh may exercise their right of suffrage without undue restraint and may obtain for themselves complete representation in their local government," — an admirable statement of the main object of Free Voting. It provides for its being accomplished substantially through such methods as we have explained. For example, when six officers are to be elected at once, the voter is allowed to cast six votes, and may distribute them

[1] Commons's *Pro. Rep.*, pp. 251-259. Horace Greeley was as earnest for minority representation as the present state boss is against it. *Id.*, p. 251.

[2] Buckalew's *Pro. Rep.*, pp. 228, 229, 163, 230, 243.

[3] Penn. Laws, 1870, p. 343. Buckalew's *Pro. Rep.*, pp. 153, 233. Bloomsburgh was his residence.

equally, or cumulate them, as he pleases among the candidates.[1]

The good effect of this law so clearly and quickly appeared that within the succeeding three years after 1870 various local laws were enacted in Pennsylvania to the same effect.[2]

It was almost inevitable under such laws that the minority should secure a just representation, and such was the fact from the beginning. In Bloomsburgh, for example, where the number of persons adhering to each party were about equal, and there were about six hundred voters in all, there were, at the first election under the law, three Democrats and three Republicans elected members of the council.

Free Voting was soon after extended to the election of constables, assessors, school directors, and auditors in several localities. After stating that the new system "diminishes the number of candidates and gives every respectable interest its due representation," Mr. Buckalew states the general results of the new system in this language: "The officers chosen . . . are fairly divided between parties. Not one person among the whole six hundred voters is known to have expressed himself against the change, or is believed to be desirous of returning to the old and unfair majority vote. . . . In short, the change has been completely satisfactory and is strongly indorsed by public opinion. . . . Each party obtained its share of the town officers by its own votes. . . . The new plan ensures justice to all, prevents intrigue and corruption, preserves the orderly action of parties, . . . and encourages the selection of good men as candidates."[3]

[1] And in aid of more complete representation, the voter was allowed to give even a fraction of a vote to a candidate; but we must think so nice a provision of doubtful utility in the present state of public opinion. There is in the law a slight, but hardly a material, limitation upon the absolute right of Free Voting.

[2] One extended Free Voting to the election of school directors; and a general law was also passed declaring that in boroughs to be thereafter incorporated there shall be six members of the council, and that the principle of Free Voting established by law for Bloomsburgh shall apply to such boroughs. Buckalew's *Pro. Rep.*, pp. 229–242.

[3] Buckalew's *Pro. Rep.*, pp. 154, 245, 248, 252. A new edition of this work is much needed, and nothing on the subject is better worth reading.

2. The party managers in Pennsylvania, when these laws for Free Voting were passed, had no more conception of their far-reaching effects than the politician and patronage-mongering classes had, at the outset, of the far-reaching effects of the first civil service reform laws. Both laws were more enlightened than public opinion was at their passage. When those effects were demonstrated, those classes united, — the managers of both the great parties conspiring to defeat Free Voting. Within three years they succeeded in repealing the law making Free Voting general in the municipalities of Pennsylvania. But they left in force the few special Free Voting laws of limited application, and these are still in force, and their influence has continued to be salutary to the present time.

There is a curious analogy between these facts and the combination of the patronage-mongering politicians against the first enforcement of civil service reform examinations. In England the partisan majority in Parliament, within three years after such enforcement commenced, refused all appropriations for the purpose, but the English administration persevered and triumphed. In the United States a partisan majority in Congress refused appropriations in 1874, — within four years after such an enforcement of the civil service examinations commenced; and President Grant did not persevere, but failed to enforce the examinations. But public opinion soon triumphed again, and civil service reform examinations were finally established in 1883.

3. The higher public opinion has not yet regained control in Pennsylvania; on the contrary, the spoils system has been intrenched there within the last few years. No well-informed man would have supposed that Free Voting could be restored in these recent years in Pennsylvania — years in which there has been a steady degradation in her politics, until her present senators now stand in disgraceful contrast with their predecessors before 1870. The supremacy of such bosses as those which dominate New York and Pennsylvania and the extension of Free Voting cannot be contemporaneous events.

Why should we expect Republican politicians — in majority in Pennsylvania — to concede minority representation to Philadelphia,— a Republican city,— when the Republicans in majority in the state of New York have not had sagacity or patriotism enough to extend such representation to New York City, by which their votes in state elections would be largely increased? The state boss of New York and his vassals apparently prefer the patronage and spoils which a conspiracy with Tammany will secure them, rather than allow an honest vote of the Republican minority in New York City, which might undermine the boss system itself.[1]

4. The just and salutary effects of Free Voting in securing minority representation are striking when compared with the results under the old party system. It has been estimated that under the party system generally at least forty per cent of the voters have no actual representation either in Congress, state legislatures, or city councils. It appears that in the New York legislature of 1869 forty-one per cent, and in that of 1871 forty-two per cent, of the voters were unrepresented. In the New York assembly of 1894 over forty-four per cent were unrepresented, and in the same year, in the New York City Board of Aldermen, over fifty-one per cent were unrepresented.[2] In St. Paul in 1894, 12,180 Republicans elected only 4 aldermen, but 11,327 Democrats elected 7 aldermen.[3] More striking still, in the New York City election of 1892, the Democrats cast less than 170,000 votes to nearly 100,000 cast by the Republicans, yet the latter were unable to elect either a single member of the state senate or assembly, or a single member of the city Board of Aldermen. Such results are a mere burlesque upon representation, and are an astounding result of the boss system and city-party despotism.[4]

Patriotic, non-partisan readers, not very familiar with the theories and the interests of professional politicians, have

[1] Commons's *Pro. Rep.*, p. 142.

[2] Commons's *Pro. Rep.*, p. 141; Buckalew's *Pro. Rep.*, Preliminary Remarks, pp. xi and xii.

[3] Commons's *Pro. Rep.*, pp. 70, 71.

[4] Forney, *Pol. Ref.*, p. 21; Commons's *Pro. Rep.*, p. 71.

very likely been asking why the Republican party of New York, for example, has not long ago established Free Voting in New York City, which would obviously insure the party a large representation from the city in the legislature. We have just suggested some of the reasons, and it is for the reader to say whether any other more creditable can be imagined.

IX

1. After such an experience in this country, it is hardly necessary to cite that of England, yet it is too instructive to be omitted. We shall soon refer, in dealing with another subject, to the peculiar methods by which she long ago nearly eliminated party politics from her municipal affairs. An exception to this was in the management of her school system, in which the intimate relations between the state church and party politics made the task peculiarly difficult. Free Voting as a remedy was established in England in the election of school boards in 1870, and has since been enforced with great advantage. It is significant of the just and liberal spirit which promoted this reform that, contemporaneous with its establishment in that year, a general extension was made of the English free-school system, which has since been a great blessing to the poor classes.[1]

An election of members of the school board of Glasgow under this law affords an admirable example of Free Voting, — one which goes almost as far as the most theoretical and radical methods for securing minority representation. This board is composed of fifteen members, and they are elected on general ticket. From all the persons nominated, the voter may select fifteen, and he may give one vote to each, or may bestow all his fifteen votes upon one of them, or otherwise distribute or cumulate them as he pleases. Voters exceeding a sixteenth of the whole can, therefore, by uniting, elect their candidate. Dr. Shaw says: "The result has been satisfactory. The board is widely representative, has

[1] Commons's *Pro. Rep.*, p. 246.

the public confidence, and has been able to proceed boldly and brilliantly with the work."[1]

2. A very recent example of an election of the members of an English school board — that for the city of Manchester — is instructive. Fifteen members of the school board were to be elected at the same time. There were forty-four candidates. The Catholic voters were the most numerous, and under the old system could perhaps have elected all the members. The Episcopalian voters were the next most numerous. Of the fifteen members elected, the one having the fewest votes received more than seventy-five hundred. The Catholics elected only two members, owing, perhaps, to that excessive cumulation or "plumping" to which, as we have explained, certain classes of voters are likely to resort. The others seem to have elected about the proportion due to their numbers. The Episcopalians elected five members, the Wesleyans two, the Presbyterians two, the Philanthropists one, the Secularists one, and the Unsectarians or non-religionists two between them. Party politics seem to have been so little regarded that the political opinions of elected members are not even mentioned in the accounts we have seen.

Who can deny that a board thus composed is far more competent for the just and enlightened management of the school system than such partisan boards as are generally elected for like purposes in the United States? Certainly some of the votes were, in one view, not very wisely distributed, but how can we much regret such plumping until the plumping voters become more liberal and intelligent? A doctrinaire reformer — a radical devotee of Hare — may regret such nominal loss of votes as is shown; yet what a vast improvement was this election on the results of the party system in the United States. Why should we weep over the lack of ideal perfection in representation, when such Free Voting — which is a long and essential step toward complete minority representation — will do more than everything else to lay its just and abiding founda-

[1] *Mun. Gov. G. B.*, pp. 40, 139.

tions. No community which has once made that advance will ever go back to the old party system, unless it has entered on the final decadence of liberty.

3. It will be instructive, even if it be humiliating, to consider some American contrasts. Recently the city of Cleveland, Ohio, elected a school board of seven members on general ticket. The Republicans cast 110,518 votes and the Democrats 91,764. It was apparently a mere intolerant party contest in a sphere where all party issues are as lamentable as they are irrational and needless. The Republicans elected every member of the board, — and what proscriptive results followed the reader must imagine. Another example may be stated in the words of Professor Commons: "The Cook County (Illinois) Commissions are elected on general ticket, with the result that, in 1892, the Democrats, with a vote of 133,000, elected their entire ticket of ten candidates, and the Republicans, with 100,000 voters, were unrepresented."[1]

4. The elections of the members of the London school board well illustrates the results of English Free Voting. The board consists of fifty-five members, and, by reason of the vastness of the population, the elections are held in eleven districts, five members being elected from each. Each elector has five votes, and he may distribute or cumulate them, as is explained in the case of Glasgow. Dr. Shaw says: "The London plan gives every considerable element an opportunity to secure representation." He tells us that "the general educational condition of London has been revolutionized within twenty-five years," that "there are now at least 750,000 children enrolled in schools of good character," and that compulsory education is not a mere nominal provision, but attendance in London "is enforced by an army of 272 visitors."[2] The method of Free Voting is applied to the election of the members of school boards throughout England. Under the Free Voting system the English public school administration has become, in some

[1] Commons's *Pro. Rep.*, pp. 98, 87, 88.

[2] *Mun. Gov. G. B.*, p. 308.

particulars, quite superior to that which generally prevails in the United States. It is to a large extent free from the scandalous relations with partisan politics which so frequently disgrace and enfeeble the American school system.

5. It is worthy of special notice, in conclusion, that Free Nominations and Free Voting would make it far easier than it can be under the old methods to secure party support for non-partisan city administration. No party is likely to favor methods which may give all, or nearly all, the offices to its opponents in great cities; but no reasonable and patriotic party can, without the strong censure of public opinion, oppose methods which will give to all parties, as well as to all classes of citizens, that proportion of the city and village officers which is due to the number and intelligence of its municipal adherents, — an effect which is sure to follow the enforcement of Free Nominations and Free Voting.

CHAPTER X. — CONCERNING THE FUNCTIONS AND RELATIONS OF CITY COUNCILS AND MAYORS

What is meant by the Council? Its character and tendency generally stated. Relations of councils and mayors considered in reference to principles and American constitutions. Councils must make ordinances, determine expenditures, and investigate abuses. The larger powers needed for true Home Rule are legislative — fit for a council and not for a mayor. To avoid constant appeals to legislature, we must have councils competent to make ordinances which relieve need of special laws. A true council is a non-partisan body, but a mayor is inevitably a party representative. The autocratic mayor and his origin. We must choose between a partisan, autocratic mayor and a non-partisan council. Who support autocratic mayors. The delusive theory of "holding the mayor responsible." The vicious theory of removals "at pleasure." Such removals anti-republican and the very embodiment of the spoils system. Causes which resulted in autocratic mayors. The noble forces unrepresented in partisan councils which Free Nominations and Free Voting would make effective in non-partisan councils. The composition of the council — the great unsolved city problem. Vicious distribution of ordinance-making power in American cities. Imperative need of competent non-partisan councils. Can never, without such a council, have consistent or adequate laws for cities. Power and duty of city council as to city laws. Councils should elect some members of the legislatures. Provisions of constitution of New York for hearings before mayor as to pending city bills. Evils possible from this provision. Hearing should be before the council and prior to presenting bills to legislature. Why non-partisan city government having adequate Home Rule powers is easiest established. The fundamental differences between city governments in which the mayor is paramount and those in which the councils are paramount. City councils as essential to municipal corporations as boards of directors or trustees are to business corporations. City affairs — a municipal corporation — contain the elements of many business corporations. Neither should regard the politics or religion of its officers. Why, as cities grow larger, such party discrimination will become more intolerable.

1. THE subjects thus far considered would remain important whatever the framework of city government. We must now decide what should be the fundamental parts of this framework, especially what should be the relations between the council and the mayor.[1]

[1] The word "council" is used to include whatever legislative body, whether of two chambers or only one, may exercise the legislative powers — or what are more accurately designated as the ordinance-making powers — of a municipality. The council cannot be said to include commissions, whose powers are quite as

To make our meaning definite, and to prevent the council we have in view being confounded with the familiar partisan bodies which have existed in this country, we wish to say, at this point, that we shall propose a city council of which a large portion of the members will be elected from the city at large; that in the main their terms of office will be six years; that they will be so classified that only about one-third of them will be elected each alternate year, thus renewing one-third of the body biennially and making a steady business, non-partisan policy possible; and that the members of the council will be nominated according to the method of Free Nominations, and will be elected by Free Voting. Therefore not only all parties, but all minorities and all considerable classes and interests among the people, will be duly represented in the membership of that body. It would therefore be hardly possible for any party to capture the control of the council as the result of any single election; and the council would obviously be such a non-partisan and continuous city legislature as no American city has ever had. The experiment of a non-partisan city government has never yet been tried in the United States, unless in Washington, it having been only the city-party system and party government which has been tested, and which has failed.

2. It is a striking illustration of the difficulties in dealing with our municipal problems, that even as to questions so fundamental as the fit powers and relations of mayors and councils there is much contrariety of opinion and no generally accepted basis on which to stand.

A glance at some first principles may contribute to sound conclusions. We may go back on the course of governmental development to the time when a king united in his person all political powers and departments, — legislative, judicial, and executive, — and his will was law. As justice

much executive as legislative; but when a good municipal system shall have been developed, we must think that commissions will be, in the main at least, superseded — their ordinance-making powers devolving upon the council. Ordinances properly include by-laws and rules, but the law and council may allow heads of departments to make regulations consistent with the ordinances.

and liberty advanced, three grand departments thus designated were developed; and under no government is that development so broad and complete as under the government of the United States. An American statesman can hardly imagine any just government which has not these three carefully balanced departments. To make laws, to interpret laws, and to execute laws,— these are, in the very nature of government, three distinct and essential functions.

As righteous government has been advanced through the differentiation of these three departments, so, on the contrary, a tendency to revert to despotism has been marked by a gradual suppression of one or more of these departments,— generally by curtailing the powers of the legislative and judicial departments and accumulating them upon the executive. Not only Cæsars, Cromwells, and Napoleons, but such municipal despots as various American cities are tending to make out of their mayors, are developed through such a reversion. We cannot in general have a good municipal government without having the substance of each of these three departments, though the state may in the main supply the municipal judiciary.

It seems to be of late largely assumed, in some sections of the United States, that a mayor elected by the people, and who possesses an autocratic power, is essential to good city government. Nevertheless, in the city of Washington, the best-governed city in the Union, there is no mayor; in the city of Paris the nearest approximations to a mayor are two prefects; in all English cities the mayors are elected by the councils from their own members; and in all Europe there is not an enlightened and well-governed city in which the mayor is elected by popular vote.

3. The first article of the Constitution of the United States declares the powers of Congress, — the legislative powers of the government. This article in substance defines the sphere within which all judicial and executive authority must be confined. So in granting a municipal charter, the first and main things to be made clear are the powers of the legislative body,— the council,— in reference

to which all judicial and executive authority for a city must be conferred. The natural conception of a municipal corporation is that of a body of which the council is the fundamental and paramount force, though a charter may properly vest considerable original powers in a mayor, as a constitution may in a president or a governor. The mayor's office should be made one of high honor and dignity. Yet to regard the mayor as supreme, and as responsible for the whole city government, is as unnatural and unwarranted as to look upon the President as supreme and responsible for the whole national government, or the governor as supreme and responsible for the whole state government. The fact that many Americans so regard their mayors is an ominous evidence of unsound municipal conceptions and perverted municipal powers.

4. The great function of the council is to make the city ordinances, as it is of Congress and the legislatures to make the state and national laws. A main function of mayors is to execute the ordinances, as it is of presidents and governors to execute the laws. Ordinances may impose duties on mayors, as laws may impose duties on governors and presidents; as business corporations, through the orders of their directors, may impose a policy which their presidents are bound to carry into effect. Ordinances are as binding upon mayors as laws are upon governors. A mayor is no more exclusively responsible for good government in a city than a governor is for good government in a state, or the President is for good government in the nation. But for debased municipal conditions, we should not think otherwise. If we clearly grasp these fundamental truths, we have gone far toward defining the true relations between mayors and councils.

It is obvious that the city ordinances made by a competent council will most authentically and authoritatively express, in a governmental sense, the wisdom, the moral tone, and the policy of the local government, and of the people who live under it. The city ordinances begin just beneath the laws, and may fill the whole governmental

sphere below them. If wisely framed, they would constitute an enlightened municipal code of which statesmen and philanthropists might be proud, and by which the governmental powers possessed by the city would be patriotically declared for its well-being. They would prescribe not merely the important duties and methods of a few of the city departments and offices, but would definitely outline and regulate the action of the municipal officers generally. To properly frame such ordinances requires the greatest wisdom and the broadest experience which the city can supply.

5. Let us get a practical view of the natural relations between the council and mayor. Suppose a legislature has just given a city much larger powers. The instant need of a competent council to make new ordinances for their exercise is obvious. The mayor is not the first to act, nor does he act the principal part; he approves the action of the council, or obstructs it, so far as he can, by his veto. It is the legislative department which is in its nature both paramount and primary.

Under all liberal governments, it is the duty of the legislative branch to investigate the executive branch, to take care that executive officers do not transcend their authority or exceed the expenditures allowed by law. Congress inquires into the doings of the President. One of its branches impeaches him for malfeasance, and the other tries him and may displace him. Legislatures investigate the conduct of governors. The modern American doctrine in some states of making the municipal executive autocratic, and conferring legislative power — aside from his veto — upon mayors, is repugnant to the whole theory of liberal governments, — is a distinct retrogression toward despotism. There would not only be great utility, but an obvious conformity to the general principles of American constitutions, in provisions which should enable city councils, when their members shall be properly selected, to fix and scrutinize expenditures, to investigate the doings of mayors, and to have an important part in proceedings for their removal.

6. It is as clearly the function of a city council (subject to the veto power of the mayor) to fix the salaries of municipal officers and the wages of municipal employees, as it is the function of legislatures and Congress to fix the salaries and wages of state and national officers and employees. The giving of large control over such matters to mayors and executive municipal officers is an illustration of a despotism in our municipal methods which would arouse an active resistance if extended to governors, presidents, or the heads of state and national departments. On the other hand, the fixing of these amounts by legislatures is often an act of arbitrary power for party ends, without adequate information and according to standards very unjust to the municipalities.

II

1. A suggestion arising from the very nature of the ordinance-making powers should be noticed here. The larger powers needed for adequate Home Rule are not in the main executive powers, but are emphatically legislative powers. They are therefore fit to be conferred upon a city council and unfit to be conferred upon a mayor. What cities need and reasonably demand is not more executive powers, but larger authority to legislate for themselves, more exemption from special state laws. If the power of legislation by the city, and hence by its council, should be even quadrupled, the mayor would not need much larger powers. But the duties, functions, and responsibilities of the council would obviously be much increased.

2. It is plain that we cannot avoid very frequent appeals to the state for special municipal laws unless we empower some municipal body or officer to supply the needs on which these appeals are based, that is, the need of local legislation for the city. It is generally admitted that this power of local legislation, through ordinances to be made by commissions, must be superseded. It must be conferred upon some other local authority. It may be conferred (1) upon mayors, (2) upon city councils, or (3) upon the two jointly. We

shall, in another chapter, show how this power may be justly conferred upon the council and the mayor, in a manner likely to result in good government. It remains to consider here, therefore, the theory which would confer it upon mayors, or mainly upon them, and would of course vastly increase their power.

(1) Practical objections of a grave character to such a policy appear at once. We have seen that one of the most serious evils in our municipal condition is the fact that it is mainly parties, factions, politicians, and political and selfish interests, rather than enlightened sentiments, the higher intelligence, and sound business interests, which are represented and dominate in our city governments. Hence the need of Free Nominations and Free Voting.

It is not practicable to secure any representation of this minority, or of these high, non-partisan elements, when a mayor — only a single officer — is to be chosen at the same time. The mere numerical majority will inevitably prevail. Save in very rare cases of a non-partisan uprising and union for municipal reform, a mayor will be, not the representative of the city or its people as a whole, but only of some party majority. Such an election would increase party power and would tend to perpetuate city-party domination. It would be easy to establish this truth by many examples, but two must suffice. Every mayor of Brooklyn — five mayors in succession from the end of Mayor Low's term in 1885 until the combination which elected a reform mayor in 1894, appointed only adherents of his own party, a practice which enabled the boss, the machine, and the party managers to rule and prosper continuously. The prostitution for party purposes of the powers of the two party-elected mayors of New York City who preceded Mayor Strong was of a gross kind which led to the uprising for municipal reform in 1894.

(2) It is plain that a true council is in its nature a non-partisan body, because one in which, as we have explained, all parties, interests, and sentiments of importance will be represented. To increase the authority of the mayor is therefore to increase the power of party in the city govern-

ment, while to increase the authority of the council is to augment the influence of the non-partisan and independent elements among the people. The issue between predominating powers in a mayor and predominating powers in a council is consequently but another form of the issue between party government and non-partisan government in cities, — between government by party opinion through partisan officers and government by public opinion through non-partisan officers.

All mere politicians and partisans instinctively favor a dominating power on the part of the mayor, as much as they condemn Free Nominations, Free Voting, and Civil Service reform. Under mayoralty domination the whole government is practically controlled, save as that reform imposes some checks, through the nomination and election of the mayor, and his appointment of the leading officers. Appointments in his discretion will be promised for votes and will be made to pay for electioneering services. Under the autocratic mayoralty system, everything is brought to the politicians' favorite test,— the test and issue of a party-caucus nomination, party-election methods, and a party majority. Why, then, should any one be surprised that the Republican state boss of New York, Tammany and its boss, the last two legislatures of New York,— the most servilely partisan the state has known,— and the present governor of New York,— bitterly hostile to civil service reform,— and the managers of the Republican party machine in New York, were and are all earnestly in favor of autocratic mayors?[1]

(3) There is room for differences of opinion as to what should be the respective powers of mayors and councils as to various details, even when the purpose is to give only the legitimate legislative powers to one and the legitimate executive powers to the other. These matters will be considered in a subsequent chapter. We are now dealing only with the new theory which with premeditated purpose makes

[1] This was written in 1898.

shall, in another chapter, show how this power may be jointly conferred upon the council and the mayor, in a manner likely to result in good government. It remains to consider here, therefore, the theory which would confer it upon mayors, or mainly upon them, and would of course vastly increase their power.

(1) Practical objections of a grave character to such a policy appear at once. We have seen that one of the most serious evils in our municipal condition is the fact that it is mainly parties, factions, politicians, and political and selfish interests, rather than enlightened sentiments, the higher intelligence, and sound business interests, which are represented and dominate in our city governments. Hence the need of Free Nominations and Free Voting.

It is not practicable to secure any representation of this minority, or of these high, non-partisan elements, when a mayor — only a single officer — is to be chosen at the same time. The mere numerical majority will inevitably prevail. Save in very rare cases of a non-partisan uprising and union for municipal reform, a mayor will be, not the representative of the city or its people as a whole, but only of some party majority. Such an election would increase party power and would tend to perpetuate city-party domination. It would be easy to establish this truth by many examples, but two must suffice. Every mayor of Brooklyn — five mayors in succession — from the end of Mayor Low's term in 1885 until the combination which elected a reform mayor in 1894, appointed only adherents of his own party, a practice which enabled the boss, the machine, and the party managers to rule and prosper continuously. The prostitution for party purposes of the powers of the two party-elected mayors of New York City who preceded Mayor Strong was of a gross kind which led to the uprising for municipal reform in 1894.

(2) It is plain that a true council is in its nature a non-partisan body, because one in which, as we have explained, all parties, interests, and sentiments of importance will be represented. To increase the authority of the mayor is therefore to increase the power of party in the city govern-

ment, while to increase the authority of the council is to augment the influence of the non-partisan and independent elements among the people. The issue between predominating powers in a mayor and predominating powers in a council is consequently but another form of the issue between party government and non-partisan government in cities, — between government by party opinion through partisan officers and government by public opinion through non-partisan officers.

All mere politicians and partisans instinctively favor a dominating power on the part of the mayor, as much as they condemn Free Nominations, Free Voting, and Civil Service reform. Under mayoralty domination the whole government is practically controlled, save as that reform imposes some checks, through the nomination and election of the mayor, and his appointment of the leading officers. Appointments in his discretion will be promised for votes and will be made to pay for electioneering services. Under the autocratic mayoralty system, everything is brought to the politicians' favorite test,— the test and issue of a party-caucus nomination, party-election methods, and a party majority. Why, then, should any one be surprised that the Republican state boss of New York, Tammany and its boss, the last two legislatures of New York,— the most servilely partisan the state has known,— and the present governor of New York,— bitterly hostile to civil service reform,— and the managers of the Republican party machine in New York, were and are all earnestly in favor of autocratic mayors?[1]

(3) There is room for differences of opinion as to what should be the respective powers of mayors and councils as to various details, even when the purpose is to give only the legitimate legislative powers to one and the legitimate executive powers to the other. These matters will be considered in a subsequent chapter. We are now dealing only with the new theory which with premeditated purpose makes

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an autocratic mayor the dominating power in city government. It says that the council shall not, in analogy to a Congress or a legislature, decide upon policy, limit appropriations, or investigate and hold in check mayoralty malversation. A new kind of mayor is demanded. The usual veto authority — which makes the power of the executive for defeating a measure equal to that of one-sixth of the members of the legislature — is not enough. The power of the mayor, we are told, should be so increased that he may be properly regarded as the chief municipal authority, substantially responsible for the whole city government, while the council should act only a very subordinate part.

Having once discarded sound and established principles, the zealots for autocratic mayors have been led far astray, and seem to have no definite landmarks. Who can tell us whether the new kind of mayors are to possess the authority heretofore devolved on commissions? Whether they are to manage the school system and election system? Whether they are to levy, collect, and expend taxes? Whether they are to be the only authority for suppressing administrative abuses under themselves — are to have the sole power of punishing the wrong-doing of their own appointees? Whether they are to be removed at the pleasure of governors, thus making true Home Rule impracticable, — are to remove themselves, or are not to be removed at all?

We cannot account for the recent theories of governing cities through despotic mayors except upon the same reasons which explain the triumph of a despotic party-boss system. The autocratic mayor is a party despot in city politics so far as he is recognized by law; while the boss-in-chief is a party despot in city politics so far as he is not recognized by law. Each demands supreme power, and each, as the agent of the dominating party, requires the legislative department of the city to be subservient to his will.

(4) It is obviously necessary to decide which, as between the council and the mayor, is to be the paramount power as to city policy. Perpetual uncertainty between them as to their powers would be disastrous. One or the other must

determine the policy, expenditures, and legislation of the city, though the mayor will of course always have the influence due to his veto power and his appointing power. Thoughtful writers have seen the vital importance of these matters. Professor Commons says "there is in fact no halfway position between rule by mayor and rule by council. If Americans accept the present tendency, they cannot stop short of the abolition of the council." Mayors, he tells us, will be removed by governors, even for political reasons. He declares that "Home Rule . . . and municipal patriotism . . . must gradually disappear in the face of advancing centralization."[1] There is a class of city reformers who mean to substantially suppress city councils and make a sort of municipal king. Ex-Mayor Low, speaking of American cities, says it "sometimes seems almost as though the attempt would be made to govern without any local legislature." He condemns this attempt and declares the need of a council with large powers.[2] A well-known writer cited by Mr. Bryce has advised that the mayor be the only elected city officer, and that every executive function be exercised by officials appointed by him.[3] A volume just published by a New York writer demands a yet more autocratic mayor, declaring that "it is wise to give the mayor absolute sway. He should," he says, "be the king or monarch of the city."[4] If the opinion should begin to prevail that the powers of Congress and of legislatures should be devolved on presidents and governors, what statesman would not have fears as to the stability of the republic? But are we sure the danger is much less when we are ready to suppress municipal representation and make despots out of mayors whom the bosses of our city parties elect and control?

There is a natural tendency, when politics become corrupt and the citizens become desperate, to accumulate arbitrary power upon executive officers. The cities of the Italian republics of the Middle Ages, as their governments sank more and more into partisan corruption, thus accumulated

[1] *Pro. Rep.*, pp. 215, 216.
[2] 1 Bryce, *Am. Comw.*, p. 633.
[3] 1 Bryce, *Am. Comw.*, p. 614.
[4] Conkling's *City Govt.*, p. 32.

powers upon their executive chiefs, or mayors, until these officers became despotic, and municipal liberty was suppressed.[1] When the boss can nominate the mayor, and compel all his appointments from the ruling party, what more natural than that both the party and the boss should welcome every increase of mayoralty power?

Such a mayor also finds support in that class of well-meaning people who are too indolent to study, or too dull to comprehend, the difficult problem of city government. Ready to take the gambler's chance that a party will elect a patriotic despot for mayor, they dismiss the subject by saying they will "hold him responsible," reckless of the fact that he feels no effective responsibility save to the party and its leaders by whom he was elected. He defies public opinion, being satisfied with the laudations of the managers of his own party, through whom he expects to secure a re-election. "Holding him responsible" is perhaps the most evasive, mischievous, and deceptive phrase in municipal literature. It disguises an open surrender to party despotism and seeks to respectably evade the duty of establishing something better.

3. If from principle we turn to the best authorities, they seem to be decisive against autocratic party-elected mayors. Dr. Shaw tells us that "the plan of greatly increasing the power of the mayor . . . is the plan of a periodically elective dictatorship . . . which is unrepublican," and that "the one-man power is on the decline everywhere in this age."[2] It seems strange, indeed, that a republic should resort to this municipal dictatorship, while monarchies reject it. But, apparently, the autocratic mayor and the municipal boss are the inevitable accompaniment of each other. Professor Commons declares that autocratic mayors would result in what he calls a "mayoralty despotism" and

[1] "Despotism is the natural and legitimate government of an early society, in which knowledge has not yet developed the power of the people; . . . but when it is introduced into a civilized community, it is in the nature of a disease . . . which, unless it be checked, has a continued tendency to spread." 2 Lecky's *European Morals*, p. 276.

[2] *Mun. Gov. G. B.*, pp. 78, 79, 62, 63.

involve city affairs in national politics.[1] Professor Goodnow of Columbia University seems to have reached much the same conclusions, and he doubts the success of this proposed advance to municipal reform through what he calls "mayoralty despotism" and a "monarchical mayor." He says that in the well-governed cities of monarchical Europe, where city-party government is unknown and where despotic power in a mayor would seem natural, no such vast powers have been conferred upon mayors as have been provided for them in this country. He points to the need of a "council which shall determine the policy of the city."[2]

4. A recent law of New York relative to the appointing power of the mayor of New York City[3] affords a very definite illustration of the autocratic mayoralty theory. This law authorizes the mayor, at any time within six months after the commencement of his term, to "at pleasure[4] remove from

[1] *Pro. Rep.*, pp. 198, 199, 215, 216.

[2] *Mun. Home Rule*, pp. 5, 6; *Mun. Prob.*, pp. 257, 308. In close analogy to the plan of making mayors despots, there has been a theory advanced, according to which cities are to have unlimited powers for their own enlargement. Under this scheme the vote of the city and that of any contiguous district, large or small, may by a mere concurrence add the district to the city; and this process may apparently go on year after year until the whole state is swallowed up by a single municipality, and the governor shall become a subordinate of a mayor. The scheme ignores the paramount and essential sovereignty of the state, as well as its right and duty to decide as to what general policy should prevail as to its subdivisions. If cities are to be allowed this power for their extension, the same power must be allowed to towns, villages, and counties; and, apparently, the discretion of making subdivision of themselves, as well as extensions, must also be conceded. The state might soon become contemptible in the eyes of those who would dominate its subdivisions, which might become supreme. Every ruling party in a city would seek by money, influence, and coercion to gain control of the largest district which would add most to its majority vote. Thus an active element of constant partisan intrigue and corruption would be introduced into municipal affairs. When the same party should be in power in a state and in one of its great cities, it would be poor party management that did not result in the corrupt perpetuation of the control of both by that party. If the cities may, as some contend, make their own charters, fix their own limits, and make autocrats of their mayors, it will very soon be of little consequence what the rural residents — of some states at least — shall say or do concerning their governments. The largest cities will be supreme.

[3] Laws, 1895, Ch. 11.

[4] We must regard it as discreditable to any American legislature to propose to allow one officer to remove another "at pleasure." The phrase is feudal and despotic, and of evil suggestion under republican government. There can be no moral right to remove "at pleasure" or for pleasure, but only to remove in the

office any public officer holding office by appointment from the mayor, except judicial officers." No reasons need be given for removals under this abominable law; no malfeasance or incompetency need be even suggested; no right to ask an explanation is allowed to the officer about to be removed; he may be the most worthy and efficient in the municipal service; the removal may be made "at the pleasure" of the mayor in the execution of the corrupt and partisan bargain which secured his own election; it may be made even to gratify his personal revenge, or to pay his election debts. Could any royal despot do more than this? Could any diabolical ingenuity do much more to make city-party despotism absolute in the executive service, or to repel from it all self-respecting citizens? Yet this lamentable spoils-system enactment was promoted in the name of municipal reform! It is a disgrace to the state of New York and will bring shame to the next generation.[1]

This law practically said to the gamblers, the grog-shop-keepers, and all the vile and criminal classes: "Give us the needed votes to elect our mayor, and he will remove at his pleasure the commissioners and high officers most obnoxious to you and appoint such as you will like to succeed them." We may now add (1898) that the ability to do this probably brought thousands of votes and vast sums of money to Tammany in the Greater New York election of last autumn.[2]

5. Every reason that will justify a mayor in removing the officers below him "at pleasure," or without giving a good reason and an opportunity for explanation, will also justify every officer in the municipal grades below in acting on the same spoils-system theory. Municipal literature presents no greater absurdity than the attempts made to support, at the

public interest — for the well-being of the people — as the law may allow. An officer must undoubtedly sometimes be the sole judge of this duty of removal.

[1] It was enacted by a partisan, Republican legislature, when the Republicans expected to elect the next mayor of New York. He was, however, elected by Tammany, with this law unrepealed. It is now the chief intrenchment of the Tammany system and its boss.

[2] See Ch. XVIII.

same time, both an autocratic mayor and civil service reform policy, — an attempt to show that all the higher officers should be appointed and removed by mayors "at pleasure," while all the lower ones should be appointed only for merit and removed only for cause regardless of party. Yet some may say it is a yet greater absurdity for supporters of the merit system to insist that the mayor is to be still looked upon as responsible for every part of a city government — according to the old theory of a despot — after nineteen-twentieths of all those who administer it have been appointed on the basis of merit tested by the civil service examinations.

We must think that in a truly enlightened community every candidate for the mayoralty would be condemned as by nature a coward, a despot, or a mercenary malefactor who should even desire an authority to make removals at pleasure, or for any cause which he was unwilling to avow. He ought to be ashamed to hold up his head before his fellow-citizens.

III

From the evils incident to the autocratic mayoralty system we may turn to some of the causes of its adoption. Many men support the system not because they like it or fail to see its dangers, but because, partisan councils having failed, they see nothing more satisfactory at hand. Yet the greater part of the strength of this system comes from the besotted party spirit which the spoils system and the boss system have developed, making ordinary party men far more servile to their leaders in large cities than they are in the villages or the country. Men in the country who would be shocked at the proposal to confer despotic power upon presidents and governors merely because excessive party control has caused grave evils in Congress and legislatures, yet seem to be ready to allow great cities to have autocratic mayors without considering why city councils, or what kind of councils, have so largely failed. Sensible men who know that the most complete failures that have ever occurred in any part of American city government were those on the part of the

New York judiciary in 1870, in the time of Tweed and Barnard, and those on the part of police courts just before the uprising in New York City in 1894, have not proposed to abolish the courts or to confer judicial power upon the mayors. They have, on the contrary, tried to make — and in the main have made — these tribunals what they should be. Why not deal in the same way with city councils, by making them what they should be, instead of conferring all their powers upon mayors?

The stupendous evils which led to the uprising in New York City in 1894 were little more than the direct outcome of the prostitution of autocratic powers by mayors in the appointment of police justices and police commissioners and other officers. In substance the city had no fit council, and the lack of it facilitated the abuse of mayoralty despotism. To give mayors yet more autocratic powers, in order to improve such a condition, is as wise as to apply a blister to cure a burn, or to set up a Star Chamber to aid free discussion.

The men who think that party government is the best for a city, or that the American people are incapable of maintaining any other, ought certainly to oppose non-partisan councils, and should seek to make mayors autocrats. We may not be able to change their opinions at once, but we may remember that the years are very few since their attitude was equally hostile toward civil service reform, corrupt practice reform, and ballot reform; and we may profitably ponder the facts that autocratic mayors elected by popular vote, and the lack of a council which represents the people rather than the party majority, are as distinctive features of American city governments as are the party spoils system and general malfeasance in their administration.

IV

No reflecting mind will lightly estimate the potent and uplifting forces which now have but a slight representation in the membership of our city councils. The citizens who

represent these forces — and whom Free Nominations and Free Voting would give seats in well-constituted city councils — have been the inspirers, proposers, and strength of the best measures for the improvement of municipal laws and administration. Such men have a moral power far beyond that due to their numbers, and have been the creators of our highest municipal ideals. But members of the partisan and politician classes, who generally manage our city politics, rarely lead in such improvements. Hardly any of the noblest municipal laws or methods have originated with them or been supported by them. Colonel Waring did more in three years to raise the ideal of municipal cleanliness than the managers of Tammany, and the Republicans who have conspired with them, had done in three generations.[1]

The just influence of the non-partisan, benevolent, and altruistic classes has been obstructed in the municipal sphere by many obstacles which party interests and monopolies have interposed. Mere politicians and partisans dislike these classes. Who can doubt, if we shall give these classes free and effective methods for combining their strength and putting it into the city councils, that representatives of themselves would soon become much more powerful and salutary than they have ever been in our municipal affairs? The elevating forces in city life are mainly business, social, moral, humanitarian, and religious forces, rather than those which are partisan and political. It is mainly the members of these classes representing such forces who are the promise and potency of our municipal regeneration. They have brought the abuses of our municipal administration to public judgment and have created our highest municipal literature. Though denied representation, they have supplied the courage and devotion which have initiated and advanced our most effective improvements, laboriously and patriotically carrying many of the intrenchments by which politicians and partisan mayors have tried to arrest the progress of municipal reform. The members of these classes are the source and

[1] See on this subject Professor Commons's *Pro. Rep.*, Ch. IX., which is very suggestive.

strength of that large number of societies, unions, and leagues, in many American cities, which prove that the higher municipal public opinion is at last aroused, and enable us to feel that the city-party system is doomed.

V

There are ample reasons which justify the statement of Ex-Mayor Low that "the council is the great, unsolved, organic problem in connection with municipal government in the United States,"[1] and that of Professor Goodnow that "the council must determine the policy of the city."[2] The power to make the ordinances of a city is a power to direct its policy. The mayor, like all other citizens, must obey the ordinances as well as the laws.

In most American cities the ordinance-making power is distributed between limited councils, commissions, boards, and single officers. Much conflict, confusion, and needless litigation are the inevitable result, as there would be concerning the laws if there were several law-making bodies in the same state. Ordinances which all citizens must obey certainly ought to be enacted by a competent body having general city jurisdiction, after public debate and a consideration of the needs of all official departments and all business interests. But quite generally in American cities, by reason of the lack of any competent council, ordinances are made in a semi-secret manner, by some authority — some commission, board, or officers having only a limited jurisdiction — without conferring with those at the head of other parts of the administration, or even the hearing of representatives of the city or its people. Besides, large parts of the administration are not regulated by ordinances at all, as justice and good administration require they should be; for where good ordinances end in municipal administration despotic or corrupt official favoritism generally begins.[3]

[1] Bryce's *Am. Comw.*, p. 633. [2] *Mun. Prob.*, p. 208.

[3] The New York City Board of Health had (in 1896) 202 ordinances made by itself alone, and constituting the sanitary code for the city, which profoundly

2. For the regulation of the police force of New York City there are (1897) more than 520 ordinances, which deeply affect the most varied public interests and official duties. Yet they have been prepared by the Police Board itself, and have been adopted without any public discussion, any hearing on the part of the other branches of the city government, or any participation of representatives of the people of the city. It may be safely assumed that they do not impose any undue responsibilities or duties upon the police commissioners, or too much facilitate intelligent public criticism or exposure of their malfeasance. Possibly if these ordinances had been framed by independent representatives of the public interests, or had been publicly discussed before a competent city council, they would have imposed so much severer duties and responsibilities upon police commissioners, and would have so much better protected the public interests, that New York City would have escaped much of the corruption and disgrace which have been connected with her police administration.

3. The need of an enlightened, non-partisan council for making all ordinances is obviously imperative, and will increase with the growth of the industries and population of every city. It is difficult to say which would be the more absurd and dangerous, to give the mayor the ordinance-making power or to give him the taxing power. The prosperity and safety of city residents depend, in various particulars, as much upon the ordinances as upon the laws. It is through their ordinances that city people declare in the most emphatic way their sense of justice, their views of official and public duty, their attitude toward education, health, morality, and religion — therefore their capacity for Home Rule. To split up the ordinance-making power and parcel it out among different semi-independent bodies, allow-

affects many important private interests and rights, as well as the duties of many city officers outside the Board. As some justification for the author's statements, he may say that at the request of the Board of Health he, as its counsel, drafted in 1866 the original of this code, which consisted of 165 ordinances, and that, with very small changes, they were adopted by the Board without any hearing or consent on the part of any other city authority, or even of the city itself.

ing such or use as much of it as it pleases to magnify its own jurisdiction and aggrandize itself at the expense of the general safety and convenience. It is a lesser evidence of a municipal condition of which no enlightened people can be proud.

V.

1. If we consider the relations of cities to the making of laws we shall find the need of a control with paramount powers hardly less imperative than in regard to ordinances. It is conceded that one of the greatest evils of the municipal situation is the need for frequent appeals to the state for special laws to be enacted by legislatures most of whose members have no adequate knowledge of municipal affairs. We have seen that, being without competent city councils, American cities cannot — until such councils are created — be safely, and are not likely to be, trusted with much larger powers for Home Rule. Most cities are without even nominal authority in the legislature to speak for themselves as a whole in regard to the laws they require, only little districts and parties being therein represented.[1] Commissions, boards, and separate officers, as well as all citizens, may at pleasure submit bills to the legislature asking for larger powers, exceptions, privileges, or salaries in their own interests, without the city being even notified. Nothing of equal importance, perhaps, is so neglected by American cities as the means of *securing good* and of preventing bad legislation affecting *their* affairs. It is not wholly the fault of the legislature if it is frequently misled, unless it has refused the city the *means of being heard*. Is it any just matter of surprise that municipal laws are often incongruous, confused, selfish, unjust, defective as well as excessive, and more in the interests of schemers, parties, and officers than in that of the cities themselves?[2] Many of these excessive laws may have

[1] The first chapter of Professor Goodnow's work, *Mun. Prob.*, sets this subject in a clear light.

[2] The laws applicable to the city of New York, for example, have become an enormous, confused mass, "incomprehensible," says Professor Goodnow, "even to the learned." *Mun. Prob.*, p. 8. See, on this subject, Ch. I.

probably been applied for only by reason of the ease of thus gaining selfish advantages over the public. We hold it to be a sound general rule that no private person and no city board or officer should be allowed to approach the legislature for the passage of a bill affecting the charter or interests of the city until the city council has had a fit opportunity for considering it and expressing its opinion, — a rule which would much reduce the number of such bills and greatly increase the information of the legislature for dealing with them. It is something near to treachery in a city officer to use his official power or influence in the legislature in trying to change the city charter before a hearing has been had on the part of the city itself.

The legislature may properly prepare such bills as it feels compelled to prescribe for a city, but it should provide for the city being heard before they are enacted. As a rule, the legislature should not allow any other bill relating to affairs of a city to be presented before it until the bill has been considered or seasonably presented for consideration in the city council. Party managers and traders in legislation would of course bitterly oppose such requirements, which would vastly reduce the number of vicious and needless local bills, as well as the amount of their own corrupt profits. But who can doubt that the quality of city laws enacted would be as much improved as their number would be reduced by such provisions?

If the councils of cities were to have no other functions than those of adopting ordinances and attending to legislation, they would be among the most important forces affecting their welfare, and would need the services of their wisest and best citizens.

2. The municipal corporation for which the council acts, and whose policy it must guide, is recognized as fit to possess a large measure of legislative power. The people of the cities are represented in the lower house of the legislature as the people of the states are represented in the lower house of Congress. Why should not the councils of great cities — in substance the cities themselves acting as a unit

through the council — be represented by senators in the upper houses of the legislatures, as state legislatures are in substance represented by senators in the upper house of Congress?

The senators, if allowed from the councils, should be elected by the councils themselves from among their own members who have served in it for at least two years. Such senators would understand city affairs and could greatly aid legislatures in dealing with them justly and wisely, — certainly an aid which legislatures much need. That these senators would be among the most intelligent, non-partisan, and useful members in our state legislatures we can hardly doubt. That such a mode of choice would give added dignity to the councils themselves, and invite superior men to enter them, seems highly probable. These senators should be chosen by the method of free voting, so as to increase the influence of the non-partisan members of the council and prevent a mere representation of the party majority in the body.

3. The framers of the constitution of New York as amended in 1894,[1] recognizing the need of a better understanding of city interests in our legislatures, provided for a hearing upon bills relating to cities before some city authority prior to their taking effect. In certain cities the hearing is to be before the mayor and the legislative body of the city, but in the largest cities, from the lack of an adequate council, the hearing is to be before the mayor alone. If the city authority disapproves a bill, it fails, unless it shall again pass the legislature. Therefore in the larger cities the mayor's disapproval alone practically nullifies the action of both branches of the state legislature, — certainly a remarkable illustration of the power of an autocratic mayor, and of the consequences of suppressing city councils.

This original device, useful to some extent, may be but a first step toward insuring cities an adequate hearing concerning bills especially affecting them. But it is obviously

[1] Art. XII. Sec. 2.

very objectionable in various ways. The mayor is not only called upon to perform legislative functions, but may have to do so on first entering office, when he has had no adequate experience in city affairs and may be familiar with hardly a single city department.[1]

A council in which all parties and interests are represented — a continuous body whose members have long, classified terms of office, and who must of necessity be at all times familiar with city affairs — would seem to be a peculiarly competent body for the discharge of such legislative functions. To such a body all city bills might be usefully referred. But to refer the bills which one party in the legislature has passed to a mayor whom perhaps another party has elected, would obviously tend to contests, to partisan scheming, and to distrusts highly unfavorable to Home Rule. What could more tend to vicious partisan intensity in mayoralty elections, to inflate the self-conceit and arrogance of a headstrong party nominee for mayor, than to tell him that he cannot only remove at pleasure every head of a department, and appoint his successor as he pleases, but that he can defeat every proposed law for the city, unless it be enacted twice over by the legislature?

4. Such increased powers conferred upon mayors makes them potent partisan forces both in state and city politics. Of the two hundred members of the legislature of New York in 1896, eighty-five were elected from three cities, and it was thought necessary to provide, in its last amended constitution, in substance, that the cities of New York and Brooklyn, which united are much less than the Greater New York, should not together have more than one-half of the state senators, and that no one city should elect more than a third of them.

The party dominant in these cities will apparently be able to raise more money for carrying elections, and to use it

[1] Such, in substance, was the case under Mayor Strong in 1895. He had to deal with the bill we have just cited, giving himself an absolute power of removal, within a very few days after his taking office, and to pass upon 161 separate bills for New York City within five months from that time!

more diabolically, than all the rest of the state. Which, in the near future, will be the greater political force, the governor of the state of New York or the mayor of New York City? Which will dictate the election of the governor and dominate the legislature, the state boss or the city boss? If minority representation in cities is not established before their power is much increased, the rural population of the state of New York will apparently act a very inferior part in its government — and this reasoning is applicable in several states.

5. It is much to be regretted that whatever hearings are to be had in cities upon bills affecting them should not take place before they are passed by the legislature. If the city is opposed to pending bills, why not ascertain the fact at once and directly without the waste of time and labor, to say nothing of the demoralizing log-rolling and possible corruption which attend the passage of city bills? There is something almost grotesque, after requiring a legislature of two hundred members to spend a long time in framing and passing a bill relating to a great city, in allowing an inexperienced, party-elected, politician mayor, perhaps for mere party reasons, to nullify the whole proceeding by a mere disapproving letter to be sent to that body. What could more tend to convert great-city mayors into semi-kingly, partisan despots, or to make state legislatures ridiculous?

6. Strength for the support of an enlarged Home Rule and a non-partisan city administration must be most largely found among the most liberal and enlightened members of the legislature. They will favor a form of city government in which all opinions and interests are fairly represented in the city councils. It is only for the establishment of such a council that opposing parties can reasonably be expected to coöperate. A city government, therefore, in which a non-partisan council is paramount is obviously that which can be most easily established and maintained.

VII

We can now see that there is a fundamental difference — alike in theory, method, and purpose — between a city government in which a non-partisan council is the paramount power, and a city government in which the mayor — elected by a party majority — is the paramount power. The first is based on public opinion, the second on party opinion; the first naturally seeks to promote the public interests; the second naturally seeks to promote party interests; the first cares nothing for the party opinions of the municipal servants, the second — save as civil service reform prevents it — requires their opinions to be those of the victorious party; the first disregards the platforms of state and national parties, the second brings these platforms into city elections, and seeks to carry these elections by party influence; the first makes removals only for cause, the second makes them for party advantage; one kind of government naturally enforces the merit system, the other the spoils system. One of them strongly tends to suppress party rule and to prevent state intermeddling in city affairs; the other intensifies and perpetuates both these evils.

As the council remains a continuous body — a majority of its members continuing over every election — it will supply the trained experience needed for carrying on the administration consistently, intelligently, and economically. The continuous council keeps the city constantly supplied with a body of experienced men in the control of its affairs; the autocratic mayoralty puts the administration into the hands of a succession of inexperienced party leaders. Such a council will be strong enough to make a reasonable resistance to the partisan schemes and patronage-mongering demands of victorious parties and bosses; an autocratic mayoralty will constantly enforce these schemes and demands.

City government in which the council is paramount will naturally act upon a comprehensive policy and move on in broadly sweeping curves, always duly responsive to changes

in public opinion as shown by the elections. City government under which a party-elected mayor is paramount will naturally advance in zigzag lines, constantly courting the temporary party majorities, and always yielding to the varying demands of state and national parties.

A paramount council would require the police force, for example, to be made as independent as possible of city politics and elections; an autocratic mayoralty would require, on the contrary, that every new mayor should appoint the head of this force — as has always been the case under the Brooklyn charter — to the end that he and his party may control it for their common advantage. Finally, government under the lead of a council would gradually suppress party discrimination and control in every part of the city administration, while a government under the lead of a party-elected autocratic mayor would make that discrimination and control absolute and universal. It would enforce party tests at the gates of every city office; it would regard party spirit as a potential, motive force in city administration; it would look forward to an endless series of party contests in the future as the great source of municipal virtue — as Tammany now does in the Greater New York.

VIII

1. All good business managers know how essential it is to have able and experienced men associated as directors, or trustees — irrespective of their political or religious opinions — with presidents in the management of great business corporations. They generally secure for such managers men much superior to those who, in the main, control our municipal corporations, though the affairs of the latter are by far the most difficult. Yet, many men seem to think that a mayor suddenly brought into his office, and very likely utterly inexperienced in city administration, may be safely intrusted with its complete control, unaided by assistants corresponding to a board of directors or trustees.

Let us glance at some facts. If we should strip one of

our great municipal corporations of all its legislative powers it would still have administrative functions large enough to be the business of at least ten great business corporations: (1) the care of the water supply; (2) the cleaning of the streets; (3) the drainage system; (4) the construction and control of docks and piers; (5) the making and repair of the streets; (6) the construction and charge of public buildings; (7) the extinguishment of fires; and if our supposed great city shall obtain the power secured by the great cities of Europe, we might add, (8) the supply and management of gas and electricity; (9) the care of a system of public baths, lodging-houses, and workhouses; (10) the provision and control of public libraries. And after these ten corporations had been carved out, there would still be left the vast departments of health, of police, of prisons, of charity, of education, of ordinance-making, and of justice and legislation.

Now, if these ten business departments were handed over in a great city each to a separate business corporation — as most of them might be with public advantage, unless we can improve our city governments — we may assume it as certain that each corporation would be managed by directors, to say the least, as competent and reputable as the officers who generally control all the vast affairs of great American cities.

The political and religious opinions of these directors would be disregarded; they would hold their places long enough to become skilled and efficient managers of their corporate affairs; these managers would appoint their officers and employees regardless of their religion or politics; they would retain them by reason of their merit so long as they were efficient. They would not, every two or three years, go outside their boards for party reasons and bring in an inexperienced man to be the head of the corporation. They would — unless they could find a better elsewhere — promote the most competent director or trustee to be president. So it is with banks, trust companies, railroad companies, and the other large corporations in which sagacity and non-

partisan business methods achieve their greatest triumphs. The directors and trustees hold the president responsible to themselves. They would decide as to the policy of the corporation. They remove presidents who are unfit for their places. Yet many people — sensible about most things — seem to think that vast municipal corporations can be successfully managed in utter disregard of all the lessons of business experience. The skill and virtue of professional politicians according to the theories of these people are all that is needed.

2. Good citizens who would have no confidence in a bank or a trust company which had not a competent board of directors to select a president, and to give steadiness and wisdom to the corporate management, seem to think that a single party-elected mayor, unskilled in municipal affairs, embarrassed by many election promises, and beset by a horde of politicians clamoring for spoils, can single-handed not only manage the whole government of a vast city, but become a potent force for its improvement. We can hardly think a good municipal system to be very near at hand when we see many men, sensible on most subjects, accepting views so preposterous concerning city affairs.

There has been no ground for surprise when we have seen our city councils and our mayors, — such as we have had, — generally baffled, overmatched, and coerced by the abler managers of our well-officered business corporations.

What right has a great city to expect its affairs to be well managed if it fails to put its ablest and worthiest men in charge of them, or fails to keep them there long enough to thoroughly understand them? These affairs are the most dignified and important interests intrusted to corporations. It is intrinsically an honor to control them. Men of the highest character, patriotism, and ambition would naturally aspire to seats in councils having charge of them, if the ways into these bodies were honorable, and the opportunities for useful service there were free and adequate.

There are men who, compelled to admit that councils

are necessary, yet tell us that able and trustworthy men cannot be secured for members, thus in substance declaring that we are incompetent for good local self-government and have no right to expect it; for it cannot be denied that our cities contain many men competent for membership in the councils we need. How we can bring them into these bodies we shall consider in the next chapter.

IX

3. One other view of the effects of a paramount and autocratic mayoralty deserves attention. When the wealth of our cities shall be vastly increased and the population of some of them shall be expressed in millions, the management of city elections and the bestowal of patronage will become a stupendous and fearful power under the party system — a political force in politics hardly yet imagined. In carrying it into effect, there will be presented to our great city population such a demoralizing exhibition of despotism and injustice as does not now exist in any other enlightened nation — hardly even Russia or Turkey. Machination will be more than ever before substituted for reason, influence for merit, subserviency to arbitrary power for the true spirit of freemen. Morality, justice, superior character, and capacity will become more and more disassociated in the thoughts of the people from all conceptions of city government. The ominous separation and repulsion which now so largely exist between the politician and official classes on one side in our cities, and their foremost and noblest inhabitants on the other, will be disastrously widened.

It has already been shown in cities where an autocratic mayoralty has prevailed that it prevents any free discussion of city administration in official circles. No officer is independent enough to criticise such a mayor. Officers who hold their places by his favor, and are therefore the mere creations of his will, have neither the temper nor the courage for arraigning any policy which he supports, or exposing any wrongful acts of which he is guilty. We have seen that

even under the city-party system the simple boss becomes a tyrant so dreaded that no party man dares confront him. But when, in the near future, the boss shall also be made a mayor — autocratic by law — he will become such a municipal despot as no American city has yet seen, and no European city would endure, or can comprehend. There will be no municipal authority which can call him to account, and much less investigate his administration. Indeed, the simple fact that he is made an autocratic mayor excludes the propriety and possibility of all provisions for his responsibility to the people.

4. It is of profound significance that under the city-party and autocratic-mayoralty system of Tammany and the Brooklyn charter, there have not only never been any proceedings against the worst acts of mayors, but there has never been any real criticism of their acts by any city officers. No imperial or feudal despotism has ever more completely than this system suppressed all free debate, or imposed a more servile and disgraceful silence upon municipal subordinates concerning their executive chief. We have already reared a generation of partisan officers in our great cities who think it a duty to their party to betray their duty to the city by concealing the wrongdoings of its mayors, before whom they fawn.

5. A continuous council, constituted as we have proposed, would apparently contain members independent enough to criticise the bad policy of mayors, and sufficiently experienced in city affairs to do it intelligently and effectively. With the great and conflicting interests of the city represented in this body, we may well believe that its debates would be instructive and earnest, and that they would contribute much to public enlightenment about city affairs. It is not too much to say that good local government is not possible — it is, indeed, chimerical to expect it — in a great city without independent public debates in a responsible municipal council, in which the action, and especially the wrongful action, and neglects of all its officers — of its mayor not less than its policemen — shall be fearlessly examined

and fittingly brought before the people. Hardly any standing committee of such a body, in a great city, could be more important than that which should have a duty to inquire and report concerning inefficiency and malversation in office — especially on the part of the mayor.

CHAPTER XI. — CONCERNING THE CONSTITUTION AND MEMBERSHIP OF A CITY COUNCIL

General considerations bearing upon the problem. No generally accepted principles or model on the subject. Some important facts and assumptions stated. The great objects in view. Fundamental provisions for a council. How the forty-six Aldermen should be elected and their terms of office. City Aldermen and District Aldermen. Village Councils. The Classification of Aldermen. Aldermen to be selected by Free Nominations and Free Voting. Some objections answered. The utility of having these two classes of Aldermen considered. How Free Voting gives much, though not complete, minority representation. Old ward and assembly districts will be broken up. A general view of the council as so far constituted. It is complete for legal action, but probably insufficient to arrest party domination. How councils may be further improved. Appointed Aldermen defined; the advantage of having them appointed by the council. Great need of inducing worthy men to enter city councils. Why better men in the councils of European cities than in those of United States.

Honorary Aldermen defined. The need and advantage of having them. The manner of choosing them. Would give dignity and wisdom to the councils. The question of salaries. The secretary of the council and his term of office. Why the council should be a single body. Concerning the transition period between partisan and non-partisan city government.

THE proper constitution for a city council is undoubtedly the most difficult of city problems.[1] We can hardly hope to propose the best possible, but the suggestion of one that is definite in outline and purpose will give precision to what we have to say, and present principles and methods in such practical application to structure, and with such definite reference to objects and subjects, as will most contribute to the usefulness of the discussion. Probably many more readers would accept our proposals if they were more indefinite; but the time has come when something more than generalities is required. Definite constructive methods are greatly needed. If we may not hope that a single city will accept our plan, it is not perhaps too much to trust that it may aid more competent minds in devising a better one.

[1] As to meaning of Council, see pp. 246, 247.

A city council should not be based on theory or speculation, but on facts and sound principles. It should be in harmony with American constitutions and social life, and it should be framed in the light of the world's best municipal experience. While accepting everything good in American municipal methods, we should allow neither a false national pride, nor a pervading and seductive spoils system, to make us blind to the experience of the older nations. Surely there is some structure of government which is better than others — which in general is the best — for American cities and villages. We may need, under peculiar conditions, to depart widely from our ideal, but it should always be clearly defined in our thought.

The structure of municipal government is so complicated — so many considerations are involved in any just estimate of a single remedial suggestion — that it is hoped the reader will not pass final judgment until he has considered each suggested provision in combination with the others. The question, for example, whether mayors should be elected by city councils — as we shall propose — cannot be wisely decided until we know how these bodies are to be constituted, and what are to be their powers, as well as those of mayors.

2. We have seen that there is no distinctly American municipal system — certainly none which commands general respect — nor is there any American city so conspicuously well governed as to be a fit model for the others. The constructive power of the American mind has never yet been, in any thorough way, applied to municipal government, though it has given birth to a motley variety of city charters. Yet it cannot be assumed that the people who devised the constitutional systems of the nation and the states are incompetent to deal with their municipal problems. Great city problems, as we have seen, are of very recent development, and have only just begun to arrest the general attention of the American people. In fact, only a small proportion of them have yet considered these problems on the basis of principle, or are well informed as to the instructive lessons which the long municipal experience of Europe can teach us.

It does not follow that a municipal system would be successful on this side of the Atlantic merely because it has succeeded on the other. Yet there is much that is common in both the governmental and business needs of cities under monarchies and under republics. France has found very limited changes to be needful in her municipal system by reason of her becoming a republic. The American people are surely enlightened enough to learn from European experience such useful lessons as it can supply, and to adapt them to their own needs in a manner consistent with their constitutional and social conditions.

3. There are a few fundamental principles and purposes which we hope the reader will constantly keep in mind in considering our suggestions: (1) there should be such frequency of elections and such numbers of elected officers as are needed to enable the people to compel the government to conform to their wishes, but there should not be elections — as has apparently been the case — merely because parties desire them, or their managers make gains from them; (2) that to all city elections in which more than one officer of the same kind is to be elected at once in the same political division, the methods of Free Nomination and Free Voting should be applied, — thus enabling all voters to be represented and each of them to bestow his ballots as he pleases; (3) that municipal commissions and boards — as now we have them — should be gradually superseded by transferring their powers to city councils, — except that certain of their powers, which are in their nature executive, may be conferred upon mayors; (4) that mayors should possess the appropriate executive powers, after the general analogy of the powers of presidents and governors; (5) that the councils should possess the appropriate legislative- or ordinance-making powers after the general analogy of a congress or a legislature; (6) that the paramount need and purpose in organizing city councils are to construct city governments, in which public opinion — which springs from the whole body of the people and not mere party opinion — shall prevail. Not only party majorities, but all the great elements of public opinion,

should be represented in the councils. We should seek to the utmost to prevent mere party divisions and contests in these bodies.

It is assumed that contests between party opinion and public opinion — between party interests and public interests — will continue with diminishing fierceness for a considerable time even after reform methods have begun to prevail in our municipalities; and we therefore propose an organization for city councils under which that contest can go on in a manner tending to restrain party monopoly, and in a way most favorable for the triumph of public opinion and the promotion of the general welfare.

4. We intend to enable the friends of non-partisan city government to unite their forces at once, according to the most favorable conditions for victory, under the proposed system, and to intrench themselves in — and enable them to hold most easily — the official positions which they may gain. Municipal reforms have been very short-lived, largely because the new officers it has elected have been compelled to act under a system which has strongly favored city-party domination.

The partisan and politician classes engage in city-party contests largely through the influence of party spirit, the hopes of office and spoils, and the love of power. The men who will be the strength of a non-partisan city government based on public opinion are sure to be of a class who vote mainly from more disinterested and patriotic motives.

It is important, therefore, to devise — and we have tried to devise — methods which shall diminish the inducements of the first class of voters to be active in city politics, while at the same time making it easier for citizens of the better class to unite their ballots, — and offering them stronger inducements to vote. These results will be attained in the degree that the selfish rewards which follow political victories are suppressed, and voting for patriotic and unselfish reasons shall be made less burdensome and more effective.

Noble men are active not only for charity and benevolence, but for great political reforms, from disinterested and

altruistic motives, and all the more active when they can see that their efforts are likely to be efficacious. Under a good city council, we think many such men who are now repelled by our party system — thinking it almost useless to vote — would take an active part in city politics and administration; for they would be able to see that their exertions would not be useless. We look upon this view of the subject as one of profound importance; and in judging of the merits of our suggestions it is hoped that the reader will consider their tendency in these particulars.

5. We shall not find it practicable to notice the peculiar constitutional provisions of different states, nor can we enter into details as to the number of members of the council appropriate for small cities as compared with large ones, the number proposed being thought sufficient for the latter.

In reference to these explanations, we submit the following fundamental provisions for a city council:

I

There should be no election for city officers oftener than once in two years.

II

Every person eligible for a city office may be selected to fill it regardless of the district or section of the city in which he may reside.[1]

[1] This provision, we think, would be favorable to the choice of the most competent officers. Professional politicians — who favor autocratic mayors — will object to it on the ground that city officers should have an intimate knowledge of localities and their residents. They do not seem to see how fatal this objection is to their main theory that the mayor should be allowed to rule the whole city. He is assumed by them to know every detail of its business and needs in every section and district. Further, this objection practically declares the voters to be incompetent to judge as to whom they want for their officials. Why should not the voters of a city be allowed if they wish to choose for one of their officers — especially if he will become a resident among them — even a non-resident who has rendered distinguished service as a city officer in some other city, — a recognized practice in Europe. The voters who are competent to decide as to a candidate's character and capacity are certainly competent to decide whether his residence is of importance.

III

There should be a mayor with an official term of two years.[1] He should have the appropriate executive powers and duties of his office, as will be more fully explained.

IV

There should be a city council, to be a single body, which should have the appropriate legislative powers and duties, which will be further defined. This council should be composed of forty-six members, to be designated Aldermen, who should be elected by the people, and of several additional members to be selected as hereinafter explained.

V

Ten of these forty-six Aldermen should be elected on general ticket, that is, by the general vote of the city at large, and they should be known as City Aldermen. Their term of office should be four years.[2] We should regard ten as too

[1] A term of only two years, which largely prevails, is suggested on the assumption that the mayor is to be chosen by the council — a choice which would be simple and inexpensive. In case he should be elected by the people, we think the term should be longer, so as to avoid as far as possible the great expense, and the electioneering and patronage-mongering corruption incident to such elections. The terms of the mayors of Philadelphia, St. Louis, and the Greater New York are four years. In many small cities the term is only one year, but in a number of the large cities it is three years. 1 Bryce, *Am. Comw.*, 595.

[2] The proportion between the number of Aldermen to be elected from the city at large and the number to be elected from the districts, as here proposed, does not differ much from American precedents on the subject. Under the Brooklyn charter, which we have examined, there were seven Aldermen elected by the city at large. The ten City Aldermen to be first elected should be so classified, after the manner of classifying United States senators, that the terms of five of them should expire in two years and the other five in four years. Thereafter five City Aldermen would be elected biennially. There are two reasons for having the terms of City Aldermen four years while those of District Aldermen are to be six years: (1) the former elections are likely to be most salutary and to involve large municipal issues; (2) the having of the diverse terms will do most to baffle mere selfish and partisan calculations and intrigue.

few Aldermen to be elected at large, were it not for the appointed Aldermen to be proposed.[1]

VI

Thirty-six of these forty-six Aldermen should be elected from districts — nine to be elected from each of four districts. These thirty-six Aldermen should be known as District Aldermen, and their term of office should be six years. For the purposes of their election, the city should be divided into four districts of as nearly equal population as practicable.

While, as a rule, the choice of well-known and able candidates is favored by elections at large, yet perhaps some voters may go to the polls only because a candidate is from their own quarter of the city; and in large cities there may be some rational basis for local-district representation. Large election districts avoid some of the evils incident to small ones. Besides, there is a strong bias and much precedent in favor of districts, which cannot be wholly disregarded.[2]

VII

There should be such provisions at the outset, through classification, or drawings by lot, — as is the case in the classifying by lot of the members of the United States Sen-

[1] In case, in any city, there shall be a majority of voters favorable to elections at large, we should prefer to have twenty City Aldermen elected by this method, and a corresponding reduction in the number of District Aldermen. See p. 292.

[2] It would be all the better if these districts were independent of the old ward and assembly district divisions in which the politicians have long been elaborately organized and intrenched. It hardly need be said that in case of most very large cities the number of District Aldermen, as well as of districts for their elections, might be less. In quite small cities, where local needs are familiar to all, the elected Aldermen should all be elected on general ticket. In this event, however, their term should be six years, and they should be so classified that only one-third of them would be elected every alternate year. But in no case should less than three Aldermen be elected at the same time, so that the method of non-partisan, Free Voting may be effectively enforced. In villages, where only the simplest form of council may be needed, it might be composed of nine Village Aldermen elected at large, whose terms should be of such length and so classified that one-third would be elected each year — or each alternate year. Party government could hardly be established under such a system.

ate, — that the terms of one-third of these thirty-six District Aldermen will expire every two years. This would result in the election of twelve District Aldermen and five City Aldermen biennially; that is, in the renewal every alternate year of the mayor and seventeen out of the forty-six members of the council to be elected by the people.

VIII

The nomination and election of both of these classes of Aldermen should be according to the methods of Free Nominations and Free Voting, as we have explained them, and, consequently, every nomination, so far as the law will take any notice of it, must be made by a certificate signed by not more than twenty-five electors. The voting for each class of Aldermen will be by a single ballot paper supplied by the city authorities, and containing the names of all the candidates of the same class to be voted for at the same time. Against the name of each candidate the voter will mark in figures the number of votes he wishes to give him, and every voter will be free to cast as many votes as there are City or District Aldermen to be elected at the same time; that is five votes, after the first election, for City Aldermen, and three votes for District Aldermen, and to distribute them among the candidates according to his sense of duty.[1]

It is quite likely that mere politicians, on one hand, and radical reformers on the other, may ask: Why not try only the better of the two methods, that of allowing the voter five ballots, or that of allowing him only three? We answer: How can we tell which is the better in the present state of American experience and opinion, until we try both? And

[1] We should thus have the principle of Free Voting applied both in its most limited manner, and also in a manner more extended. We secure, in the election of City Aldermen, some of the advantages of a large choice among candidates — in making which the most intelligent voters are most competent to act wisely in the general interest of the city. The District Aldermen are to be elected in a manner which, while it largely defeats mere party control, and will make some real minority representation possible, does not go beyond well-tested American precedents, — indeed, not so far as the successful experiments in Pennsylvania. See Ch. IX.

what better method of trial than elections side by side, at the same time? We have seen that in two states the three-ballot method has been salutary.[1]

IX

Before proceeding to the additional membership of the council which is desirable, it will be well to consider somewhat the two classes of Aldermen we have already proposed.

The City Aldermen. — In electing five Aldermen-at-large, to be called City Aldermen, once in two years, for terms of four years, an opportunity will be afforded for giving conspicuous expression to public opinion concerning large questions of city policy, in which the people may take a deep interest. In these elections the city will speak as a whole, and there would seem to be little opportunity for sections or parties to bargain with each other under the method of Free Voting. So long as party divisions shall be kept up in regard to city affairs, each party will probably make great efforts to secure a majority in the elections. These efforts, however, must spring rather from party spirit and the desire of demonstrating a superior number of party adherents than from any hope of gaining much in the way of offices, spoils, or the control of the council — as we shall soon see. As Free Voting will give every elector five ballots, and allow him to bestow them as he pleases, no party, save under peculiar conditions, will be likely to elect more Aldermen than are due to the number of its adherents, and generally each

[1] See Ch. IX. We shall, in the next chapter, show that in England and Scotland the giving of the voter more than five ballots has also been salutary. We propose to try which is the best of two good things. It will be noticed that a much larger number of voters will be required to elect a City Alderman than to elect a District Alderman, and hence more complete provisions for minority representation are important in the former case than in the latter. We may say here that the reform charter for New York City, which passed the legislature in 1872, but which the Tammany Governor, Hoffmann, defeated by his veto (see pp. 237, 238), provided for five city districts, from each of which nine Aldermen were to be elected at once, and every voter was to have nine votes which he could distribute among the candidates as he should prefer.

party will be able to elect that number, provided its candidates are as worthy as the others.

But, more important still, the non-partisan, independent voters — all those who prefer good Aldermen to mere party victory — can by uniting generally secure the representation which justly belorgs to their number; or they may use their power, so far as they think best, for the election of the best candidates nominated by others. We have seen that one more than one-sixth of the voters can by uniting elect their candidate.[1] Minority representation will thus be in a considerable measure secured in electing the City Aldermen. It is obvious that mere partisan reasons and mercenary inducements for voting in these elections will be made much weaker than they would be if the mere majority could, as under the party system of voting, elect all of the five City Aldermen. As bearing on the question of spoils and party control, it should be noticed that only five of the ten City Aldermen are to be elected in the same year.

2. On the other hand, is it not equally obvious that all citizens who vote and are active in the city elections from the most patriotic and disinterested motives, will be stimulated to greater exertions by the fact that these elections will generally give them the representation due to their numbers? Here we see the first illustration of the important fact, to which we have called attention, that the *very method of voting* may be made to encourage and attract the best voters, and to discourage and baffle the worst. May we not reasonably expect that more voters — more at least of those who vote for the most unselfish and patriotic reasons — will go to the polls at such elections than would go there at elections when none but the party majority can secure any representation? Is it too much to hope that this right of Free Voting may be used to place some able and independent City Aldermen in the council and to keep them there for a long time?

3. We do not attach supreme importance to an exact

[1] See Ch. IX.

representation of the numbers holding different opinions, or believe it possible to secure it, yet an approximation to this result is practicable, and would be highly salutary. It would defeat the despotism of the party majority; it would make the boss impossible; it would make the mercenary vote largely unsalable; it would destroy the profits of managing the business of city politics.

Suppose, for example, the whole number of city voters to be 73,000, of whom 31,000 support the candidates of one party, 25,000 those of a second party, and 2000 of a third party, while there are 15,000 non-partisan or independent electors who will vote for the best candidates irrespective of mere party interests. Under our party system, it would be possible for the 31,000 to elect their five aldermanic candidates, and for the other 42,000 voters to be left unrepresented.[1] But under Free Voting, while the two larger parties would be fortunate if they could elect four City Aldermen, the non-partisan voters could certainly elect one of them, 9126 votes being enough for this. They could also cause the election of some of the best candidates nominated by any party — they having more than 5000 votes to spare for this purpose, after electing their own candidate — however impossible in practice it may generally be to make all of them available to the utmost. Obviously, each party would incline to put up worthy candidates whom conscientious, independent voters could support.

4. Is it too much to assume that this method of electing the two classes of Aldermen would exclude mere party domination, and bring into city councils men quite different from those whom American cities have generally elected to such bodies? The bitterness with which mere politicians, partisans, and all bosses oppose this method of voting shows their answer to this question. Votes would doubtless be sometimes so bestowed among the five candidates for City Aldermen as to fall much short of the ideal representation which is possible. Objections on this score are likely to come

[1] See, on this subject, Ch. IX.

(1) from radical, though patriotic and conscientious, reformers who sometimes fail to secure the greatest good possible because they insist on ideal perfection at the outset; and (2) from radical partisans and politicians, who insist that the strongest party should be able to elect all the candidates. We have seen that the first of these objectors will tell us there are several forms of cumulative voting which would give a more complete representation. We need not dispute about the facts. But all of them are too complicated for the present state of public opinion, — their zealous advocates dispute among themselves, — and nothing will do so much to enlighten that opinion as enforcing the easier methods we propose.

District Aldermen. — Only a few words of explanation are needed concerning the election of the three District Aldermen every alternate year, from each of the four Aldermanic districts. Their six years' term of office insures an official experience on the part of these officers adequate for learning how to manage the city business wisely. As one-third of them is to be renewed at every biennial election, no unwise policy can long prevail through their votes. There are some reasons which favor elections in great cities from a small number of large districts. There may be local interests of a peculiar kind important enough to arouse strong sectional jealousies. A feeling, however unfounded, prevails largely to the effect that elections in districts are more under the control of the people than elections at large. If we have four districts, it can be said that more of the candidates will be personally known to the voters. On the whole, it seems to be wise, at first, to defer largely to the feelings in favor of such districts which may be decisive of early reform.

In electing three District Aldermen at once from each district, by the method of Free Voting, it is likely, so long as parties shall think it worth while to exert themselves in city elections, that each of the two larger parties in the districts will generally be able to elect one of the three District Aldermen, and that the most non-partisan voters will

be able, if not always to elect the third from their own ranks, to at least effectively and very usefully admonish both parties of the need of nominating good candidates. If, for example, the voters of the two great parties and of the class which will vote more or less independently of parties, are respectively 9000, 7000, and 3000 in a district, it is easy to see that no party is likely to elect more than one of its candidates without the aid of the non-partisan vote, and that this vote may be a very salutary power. Both parties would make nominations with a view to win it.[1]

2. By this method of voting, the old party ward and assembly district organizations and intrenchments will, to a large extent, be made useless. In councils so elected men standing for opposing theories, policies, and interests, in the same districts, and well informed concerning them, will confront each other on the floor of the council. We must think that debates will be more intelligent, earnest, and useful under such a representation than they have been under the old party system according to which only the representatives of one party or interest in a district appear in the council. It is worthy of notice that, as only a third of all the District Aldermen are to be elected at the same time, little patronage or spoils is likely to be the fruit of a victory; so that while all the motives for patriotic, unselfish voting are left in full force, those which impel the partisan, mercenary, and venal voter will be rendered largely inefficacious. The influences which support the system of party leaders would seem to be in large measure suppressed by this method of electing the council.

General View of the Council. — Looking at the council as thus far made up, and to the manner of getting into it, we see that the principal departures from American precedents are (1) Free Nominations, (2) Free Voting, and (3) minority

[1] The constitution of New York as amended in 1894 (Art. XIV. Sec. 2), in reference to conventions for amending the constitution, provides for the election of three delegates from each Senate district of the state, and for eighteen delegates from the state at large, — thus approving much of the theory we have adopted, — but unfortunately it contains no provisions for Free Voting or minority representation.

representation; that is, a representation of the whole people and all their interests, irrespective of parties, instead of a mere representation of party majorities.

It seems quite clear that if no political party should take any action, as such, concerning these aldermanic elections, the people could easily go forward and elect the members of the council under the methods proposed. If, on the other hand, parties and their accustomed agencies should conspire to do their utmost to control the elections, the non-partisan independent voters could elect the candidates due to their numbers. As the ballots would be supplied at public cost, very little money would be required for election expenses. Elections would be much more simple, easy, and inexpensive than elections under the old party system; for all the complex machinery for party enrolments and nominations, and all questions as to their regularity, would be avoided.

2. There are likely to be objections to such a council based upon two opposing theories, which deserve some attention. (1) On one side, it will be said that the council will be rigid — that it cannot be readily enough made to conform to changing opinions among the people. If by changing opinions are meant opinions concerning national party issues as declared in party platforms, we are glad to think such a council would probably take little notice of them. The execution of a sound and consistent municipal policy, and the doing of the public work of a city, require some steadiness and consistency of management — an advance in broadly curving lines, and according to well-planned and systematic methods.

The wise changes of municipal policy which show themselves in the non-partisan vote of a city are pretty sure to affect, in a corresponding degree, the opinions of the members of its council. It has been one of our municipal evils that our city officers, even if honest, have not had the moral courage or the legal power needed to support the public interests effectively against sudden, partisan, and mercenary combinations. It is only towns and small villages, whose

affairs are very simple, that can get along with annually elected officers. It needs to be repeated that the larger the city, the longer the experience required on the part of its officers for the management of its affairs. The aldermen who remain over each election will be able to prevent a sudden revolution, but they are not very likely to withstand any strong and salutary expression of public opinion in an election.

2. On the other side, it may be said that the council will be too weak to avoid a complete, damaging surrender to the party which may have a majority in a biennial election. There is certainly room for diverse opinions on this point, and we may doubtless learn much from experience. But let it be remembered that the newly elected aldermen can hardly all belong to the same party. A clear party triumph in the council would require the votes of members of a party who had been several years in the body, and men thus situated do not generally incline to a revolutionary policy.

3. Nevertheless, we must think there is more danger that a council, constituted as we have suggested, and without other members, would be too weak to stand with adequate stability for the public interest, and against party interests and selfish combinations, — especially for the next few years after its creation, — than there is that it would be strong enough, or inclined, to withstand public opinion in the interest of domination by itself. Indeed, we are so impressed with the need of fortifying the council, especially in large cities, against partisan assaults, and of bringing into their membership men who will more fully represent public opinion and public interests, that we shall propose a third class of aldermen, novel in this country, though justified by a vast experience elsewhere, — *a class of aldermen to be chosen by the council itself.*

4. But before we do this, we trust the reader will notice these points: (1) that the council, as thus far constituted, *is complete and legally sufficient for its duties*, at least according to American standards; (2) that it is in no way dependent for discharging its functions, in a legal sense, upon the third

class of aldermen to be proposed; and (3) that this third class is proposed only for the purpose of bringing into the council members who will increase its wisdom and non-partisan spirit, and give it more of the courage, business capacity, and independence needed for withstanding partisan aggression and political scheming.

The need and utility of this third class of aldermen — especially in the early stages of the enforcement of a non-partisan, municipal system — may be easily illustrated. Parties and their managers will make desperate struggles at the outset — as they did when civil service reform methods began to impose effective restraints — to break down the new system. They will nominate intense partisans for aldermen who are bitterly opposed to a non-partisan council. For a time, possibly a majority of the aldermen may be bitter partisans of different parties. The residue of the members will very likely represent the non-partisan, independent members of the community — whom these opposing partisans dislike perhaps more than they do each other. For a time, such antagonistic elements would be unfavorable both to just and patriotic action by the council, and to the friendly coöperation of its members — though, before long, the futility of this passionate kind of action would be recognized, and it would unquestionably be discontinued.[1] Nevertheless, it seems wise to bring into the council a few additional members — to be chosen by the elected members of the body — not merely for such temporary reasons, but for those more important and abiding, which will soon appear. As these additional members should and would be selected by a two-thirds — or a three-fifths — majority vote of the council, — and according to the methods of Free Nominations and Free Voting, — it is hardly possible that they should be men of partisan or radical opinions.

[1] See on this point the results of experience in Germany, Ch. XIII. pp. 360, 361. The author, during his service as a Civil Service Commissioner, found that such young men as entered the public service ready to wrangle over party theories soon appreciated the folly of such conduct, and learned to work peaceably side by side in the public departments — as the conduct of our letter carriers and customs revenue officials, selected through civil service examinations, now constantly shows.

They must be men of moderate and reasonable opinions to command such a majority.

Can there be any doubt that it would be a great gain to put into the council say ten members who hold a position between the conflicting elements in the body, and have not won their way into it through a popular contest? They would naturally be peacemakers between the extremes. Having received their membership from a majority of the whole body, their influence would naturally be used for harmonious action and a reasonable, non-partisan policy. We shall reserve the vast experience which justifies these appointed aldermen until after we have stated the manner of choosing them, and we hope the reader will reserve his judgment.

X. *Appointed Aldermen*

1. The council should, for reasons just stated, ***appoint into its own body***, after the first biennial election, ten other aldermen, to be known as Appointed Aldermen, for the term of four years, the same being in addition to the forty-six elected Aldermen, and making the council consist of fifty-six members, each of whom will have the same powers and duties.[1]

As such a method of choosing municipal legislators finds no extensive precedents in the United States, and from its mere novelty may fail to receive the thoughtful consideration of those worthy conservatives who distrust everything new, we hasten to promise them a justification of it by a larger and more satisfactory practical experience than can be cited in the United States in favor — perhaps we may say — of any municipal method of doing anything whatever.

2. It has long been the American practice on the part of city councils for them to fill the vacancies in their own mem-

[1] The ten members first appointed should be so classified, according to the method before explained, that the term of five of them shall expire at the end of two years, and thereafter five of the Appointed Aldermen will retire biennially — making the council consist of sixty members after the first two years. We might properly speak of these aldermen as Elected Aldermen, but it will be convenient to refer to them as Appointed Aldermen, in order to distinguish them as a class.

bership. This practice covers the only real question of principle which our suggestion involves — the question as to selecting legislative officers by legislative officers. We would merely extend the principle to the selection of five new members biennally.[1] The constitution of New York, as amended in 1894, declares that city officers may be elected by the people, or may be appointed as the legislature shall direct. The legislature may therefore vest the appointment of any and all city officers in any other city officers, save where the constitution has otherwise specifically provided. The same principle is also extended to county officers.[2] Here both the principle and the policy we have suggested have an ample constitutional basis.

It seems almost obvious that members of city councils who are familiar with the authority and multifarious duties of these bodies must be especially well qualified to decide who are most fit to be made members. The real question as to the wisdom of conferring the suggested appointing power, therefore, turns upon the probability of its being exercised in good faith in the public interest.[3]

3. Let us consider this probability. To insure fairness and complete publicity in appointing these aldermen and to enable public opinion and the public press to be effective, written nominations for the places to be filled should be required to be made by certificate signed by five members of the council in analogy to the certificates required under the methods of Free Nomination as we have explained them. These nominations for Appointed Aldermen should be placed upon the public records of the council at least ten days

[1] While these pages are being written (1896), a New York State Commission, appointed by the governor, has reported a bill for the government of cities which provides not only for the council filling vacancies in its own body, but for its filling all vacancies in any of the elective offices of cities. Const., Art. X. Sec. 2.

[2] Const. New York, Art. X. Sec. 2.

[3] It may be said, with much truth, that the need and utility of having Appointed Aldermen are much greater in large cities — whose affairs are complicated — than in small ones. Yet in England — which has tested the utility of Appointed Aldermen for more than sixty years — they are provided for even in the smallest of her more than three hundred cities.

before the nominees can be voted for. Every member of the council should be required to vote on their election. Each member will, of course, have a right to cast as many votes as there shall be candidates to be elected, and may distribute them as he pleases. The five candidates — the ten at the first election — having the largest number of recorded votes should be declared elected.[1]

These provisions, we hope, are well adapted for bringing into the council a class of candid, reasonable men, opposed to all partisan extremes, who, feeling indebted to the vote of the council itself, will be likely to use their influence in favor of a liberal, broad, and conciliatory policy, in harmony with public opinion and the public interests — rather than for advancing partisan projects or unworthy combinations.[2]

4. There are reasons of a very different and very decisive kind which call for the choice of these appointed aldermen by the council. Grave evils in our city affairs have resulted from the fact that our aldermen have been, in the main, representatives of mere parties, factions, and partisan and mercenary interests. They should be made to represent, as far as possible, the vast business interests and the higher sentiments of our cities, — their commerce, their financial institutions, their industrial experience, their artistic and educational interests, the altruistic feelings which gave birth to our institutions of charity and benevolence.

Municipal administration has been so largely regarded as a matter of party politics and as the doing of mere coarse work that vast numbers of citizens have hardly considered it as having any relations with these higher things. These matters are not generally thought to need any representa-

[1] In order to prevent Appointed Aldermen being selected in reference to their anticipated votes for officers soon to be chosen by the council, they should not be allowed to participate in such choice within two or three months next following their own appointment.

[2] As it might happen — naturally enough by the contrivance of the party majority to serve its own ends — that only one or two places among the Appointed Aldermen would be arranged to be filled at the same time, it should be provided that when there are not as many as three, to be appointed at the same balloting, a four-fifths vote of the council should be required to appoint a nominee — thus generally preventing a mere party majority choosing its favorites.

tion; their influence is hardly regarded as becoming in a city council; the men who fitly represent them are not likely to be considered by those who make nominations according to our party methods. Most of the citizens best endowed for sharing in this higher representation would, for various reasons, decline — some from mere modesty, some from a dislike of all political contention, some from inability to meet the election expenses, and some from the bad repute of our familiar city councils — to stand for popular election. Yet some of them would, nevertheless, gladly take seats in councils if quietly chosen by their members, and asked to serve from a sense of duty. Of course mere politicians and bosses will oppose such representation.

Men well qualified for special and highly important duties in city councils — men, for example, connected with education, art, charity, and practical science, who might not be sufficiently well known in political circles to be available for popular election — might, nevertheless, be brought by appointment into the council, and might regard it as an honor to serve there. Who can doubt that the members of a non-partisan council, responsible for good government, and naturally desiring to add dignity to their own body, would gladly appoint members competent to deal with the most difficult and scientific parts of the administration? They would certainly be members of a kind of which there is great need in American cities.[1]

How can the councils of our cities ever be made competent to deal wisely with matters connected with their highest culture and their noblest sentiments, if those most competent to act upon such subjects are repelled both by the ill-repute of these bodies and the vicious methods of entering them? We certainly cannot afford to neglect any honorable methods

[1] See the chapters on the Government of European Cities for proofs of the advantages of having such classes of men in our city councils (pp. 345, 346, 358–364). While these pages are being written (1896), the cultivated people of New York City have been compelled to go to Albany and procure a special law to prevent their partisan, incompetent City Council from authorizing the erection of objectionable statuary in their great public park. The New York Charter of 1897 provides for a City Commission on Art. See Secs. 633–637.

of improving them which have been found salutary in the best-governed cities of the world.

5. It may be difficult at first to induce the most desirable citizens to enter the councils, even if they are thus appointed. But when such an honorable way shall be opened to them, we may believe that patriotic motives and an enlightened public opinion will be effective persuasions for entering upon it. When a few worthy men shall have accepted seats there others of their class will be glad to join them, as the experience of other countries seems to prove. When the council is open to such citizens, they must enter it or disgracefully keep silent under the rule of blackmailers and corrupt politicians. Professor Commons expresses the opinion, in which we fully concur, that if an open and honorable way should be provided for the coöperation of the best citizens in the government of American cities, their councils would soon be honored and enlightened by their presence. He declares that "it is generally agreed that the government of English and German cities is superior to that of American cities. Public officials are renowned for their honesty, efficiency, and economy of their administration. The municipal councils include the best and most intelligent citizens. . . ."[1]

6. Why is it that in the cities of no country do its best citizens contribute more liberally in private ways for education, charity, and benevolence than in the United States, while in no enlightened country do such men do so little, officially, to mould and administer the local governments by which these matters are profoundly affected? Who can doubt that the base and partisan conditions of securing municipal offices are among the chief causes of this anomaly?

In view of these considerations, the reader must see the profound importance of using every legitimate means which will tend to bring the best men into the city council. He has, perhaps, been asking himself why there should not be a law-making service in this body; a condition of eligibility to the mayoralty. It might, we think, with great utility be

[1] *Pro. Rep.*, pp. 203, 208, 209.

provided that no man should be eligible for nomination as mayor who has not served for at least two years as a member of the city council within the last three years. Apparently, such a provision would have these effects: It would dignify and honor the council in popular estimation; it would strongly tend to bring into its membership all men of capacity and honorable ambition who aspire to the highest office in the gift of their city; it would defeat secret and sudden schemes for foisting little, incompetent politicians into this great office; it would enable the people to know what sort of men were candidates for mayor; it would be a salutary proclamation of the will of the people not to have their chief executive affairs intrusted to any man who has not an adequate practical knowledge of them, and has not shown a real interest in their administration. It will soon appear that the mayors of the best-governed cities of Europe are, with great advantage, elected from among the members of the city councils, and by its vote. Whatever can be said against having the mayors elected by the councils, every fair-minded man must admit that any person who has not ability enough to gain a seat in the council, and patriotism enough to serve there for two years, is not fit to be the mayor of a city. May we not hope the time is not remote when it will be considered a piece of unpatriotic and audacious impudence for any party boss or politician to propose a person for mayor who is not well experienced in city affairs — who has shown more interest in his party than in his city?

XI. *Honorary Aldermen*

1. The more we consider the subject the more we are impressed with the supreme need of bringing the ablest and best men into the city councils. Our confidence that the methods already suggested would contribute much to this result should not blind us to their defects. It is one of them that they lack provisions for bringing into the councils the valuable advice of men — mainly ex-officers — who have had the most instructive experience in municipal administration.

The presence of a few of them would add much both to the wisdom and the dignity of these bodies.

An attempt to reënforce the council from this quarter is only a continuance of the policy we have urged from the beginning — that of securing the most competent city officers possible. Let us, therefore, offer some further suggestions, not so much as being immediately practicable, but as now profitable for consideration, and which — we trust — will be found practicable in no remote future, when city government shall more largely command the attention of thoughtful Americans and a more enlightened public opinion shall prevail. What we are to propose is not so much a further addition to the governing officials in the council, as the reënforcement of the body by elements which will add to its wisdom, its dignity, its non-partisan spirit, and its command of public respect and confidence — elements to be supplied by a small number of members, say from five to twelve, to be known as Honorary Aldermen.

They should be mainly ex-municipal officers; they should not be under sixty years of age; they should have had great official experience which would give them large non-partisan capacity for usefulness in a municipal legislature; they should receive no salary; they should have the amplest authority for advice, suggestions, and debate in the body, but they should not vote.[1]

2. The same classes of persons who, a few years ago, showed the methods of civil service reform to be utterly impracticable, chimerical, and useless — according to their theories — will very likely bring similar charges against these suggestions. They believe that a partisan favorite — a hustling, young politician, and assembly district leader,

[1] Perhaps the most valid objection to their voting would be the danger that they might in that event be chosen by reason of their political opinions, an objection which might perhaps be sufficiently removed if they could not vote within a year after their being given seats in the council.

The official term of Honorary Aldermen, we think, should not be more than two or three years. They are competent for their duties at the outset, and are not likely to long remain very efficient, but if they do, they can be reëlected. It seems desirable that the possibility of being an Honorary Alderman of the city council should be open to many ex-city officers of a high grade.

nominated in a secret primary, and elected by a partisan vote — is a much more desirable member of a city council than an ex-officer of the city, wise from experience, whose honorable official career commands the admiration of a whole city and has caused the members of the council, regardless of party, to desire the honor of his presence among them. Doubtless there are many partisan voters who would prefer the boss should choose twenty members of the council rather than have distinguished official merit, which the council might wish to honor, gain a single one of its seats.

3. Many good citizens will undoubtedly at first hesitate at the novelty of our suggestion, and think it too incompatible with American precedents to be very soon, if ever, adopted. We cannot be surprised at this, but venture to think the proposal will stand the test of reflection. Who will deny that it would be a gain to any city council to have among its members respected ex-judges, ex-mayors, ex-comptrollers, ex-police justices, ex-district attorneys, or ex-police, tax, school, fire, health, or dock commissioners, or superintendents, of the character the council would select? A moment's reflection will suggest the valuable knowledge such officers would bring to the debates and investigations of the council, and how much some of them would add to its dignity.[1] Would it be unwise even to confer the offices just referred to upon the understanding that the men who have held them are, after their retirement, under an honorary obligation to serve a short term in the council, if able, and called upon to do so?

4. Such aldermen would be all the more useful because they would enter the council at that mature age when the fires of party spirit and ambition would have ceased to burn, when men naturally and unambitiously seek places of quiet and honorable usefulness and the respect of all their fellow-citizens. Inquiry, we think, would show that a large majority of such ex-officers who have returned to private life

[1] Why should not an officer like the late Commissioner Waring of New York, who has rendered invaluable service to a city, be allowed to take part in the debates of its council?

with the respect of the people, have become wearied and disgusted by the folly and pernicious effects of party and corrupt contention over city affairs.

In a healthy condition of municipal life, men of honorable ambition and a patriotic sense of duty naturally desire such positions as we propose for them. Citizens who have recently left official places of active labor generally desire a useful and honorable connection with the public service which will afford them the opportunity of making their rich experience beneficial to their fellow-citizens. They generally have leisure for serving the public. Some of them have a strong desire to be instrumental in supplying defects, which they best know, in the municipal laws and ordinances, and to aid in the suppression of abuses and vicious methods which they are the most competent to set forth. Why should they not have the opportunity? Why should not the people have the benefit of their experience? When city ordinances are being framed, or bills are being prepared for the legislature, why should not city councils have among their members men who have long served as judges, justices, district attorneys, mayors, comptrollers, school superintendents, and heads of great departments?

5. The bringing into city councils of the men most competent to hold seats there is justly regarded as among the most difficult and grave of all municipal problems in the United States. We are sure our readers will not thoughtlessly dismiss any suggestions which tend to such a result, and we beg to advise them that in the next two chapters we shall ask their attention to evidence that, in some of the best-governed cities of the world, the kind of wisdom and experience we would thus bring into our city legislatures has been a part of the elevating and abiding force by which good city government has been secured.

Monarchies and aristocracies have some ways of enlisting wealth, learning, and high social position on the side of the government which are not available in a republic, but surely republics should not allow such governments to surpass them in their methods of utilizing, for high govern-

mental purposes, the invaluable experience and wisdom which have been developed in their own public service. A great end of all government is to bring the best and most capable men into the official service and give them a real liberty while there to be useful to the people. No other residents of American cities are so much interested as the poorest and the most unprotected of their inhabitants in having in the city councils the kind of men whom they would make Honorary Aldermen, — the men most independent for resisting the corrupt and despotic methods of parties, and best informed concerning the most wronged and most unprotected classes.

6. The best manner of choosing Honorary Aldermen may be open to some doubt. It is important to prevent their being chosen for party purposes, or for impairing the balance of power between the mayor and the council. Perhaps it would be a good provision to allow the mayor to fill one or two vacancies among these Honorary Aldermen by appointments to which a two-thirds majority of the members of the council should not by their vote object; and also to allow the council to fill any such vacancy by an election in which three-fourths of its members should concur. There are obvious advantages in having two ways open to these honorary seats. When vacancies are not thus filled they should be filled as vacant seats are to be filled among Appointed Aldermen.

It would be no just matter of surprise — in view of the bad reputation of American city councils — if these places of honor should at first be little sought by the men most competent to fill them. We must count upon gradually raising these bodies to their legitimate position of respect and dignity — as we shall soon find that other nations have raised them — until such honorary seats are much desired.[1]

[1] The study of municipal government is too little developed in the United States to warrant the anticipation of more than somewhat remote practical results from methods of the nature we shall now suggest. Nevertheless, we venture the opinion that the time is not very distant when great American cities will allow, for illustration, ex-presidents of chambers of commerce, and of Bar associations, and also great municipal benefactors Honorary seats, if not in the

7. European cities have demonstrated the great utility of such committees as are referred to in the last note. The city of Berlin, for example, is said to have 250 committees — somewhat analogous to that created for Boston — composed of about ten thousand members who aid the city government by their coöperation as a part of its regular machinery. The influence of this coöperation by the people seems to be excellent.[1] City parties and all mere politicians and bosses will of course oppose these suggestions; nevertheless, we venture to think that in no remote future some of them will be carried into effect with great public advantage.[2]

city council, yet seats in some sort of executive bodies which will take an effective part in municipal administration. The last Ex-President of the New York City Chamber of Commerce, Mr. Charles S. Smith, has rendered distinguished services for the city of New York, and he would be a valuable member of a city council. The late Charles L. Brace, the founder and manager of the Children's Aid Society of the city of New York, did more which honors the city, and has been useful to it, than was done by perhaps any one of its officers during his generation. Miss Louisa Lee Schuyler, the founder and chief director of the New York State Charities Aid Association, has done more to improve the charity administration of the city and state of New York than was done for it by any mayor of her time. Mrs. Josephine Shaw Lowell has demonstrated a very high and useful capacity for philanthropic city administration. Two women have been chosen members of the City Council of London, though in advance of any law providing for their election. Mr. Quincy, the mayor of Boston (1897), perhaps finding need for a wisdom or civic devotion of a higher kind than that which her elections had brought into her council, has recently formed a non-partisan committee of private citizens for aiding the municipal administration, and also an Advisory Board for visiting city charities. It is composed of representatives from the Board of Trade, the Chamber of Commerce, the Clearing House Association, the Merchants' Association, the Real Estate Exchange, and several other business associations of the city. He has also appointed a private board of visitors, composed of persons of both sexes, for inspecting public institutions. This committee holds bi-weekly meetings with the mayor, and he has found its coöperation very useful. It is now considering important city problems, and the mayor of Boston desires that the charter proposed for the city shall contain provisions for making such committees a part of the regular machinery of city government. (*Addresses Mayor Quincy*, January, 1896, pp. 4–9; do., 1897, pp. 30 and 46.) It is obvious that such a non-partisan business body to coöperate with the mayor is utterly repugnant to the whole theory of an autocratic mayoralty, and is in the very spirit of our suggestion for a city council in which all the great business interests of the city are to be represented.

[1] See Ch. XIII.

[2] See *Annals Am. Acad. Pol. and Soc. Science*, September, 1896, pp. 197, 198; and Commons's *Prop. Rep.*, 204.

XII

The subject of salaries for members of city councils deserves some notice. The general view in the United States that public officers should be paid for their services naturally tends to the conclusion that if city aldermen are not paid, the public has no right to much service at their hands and that they may justly secure a compensation in some way of their own. Very small cities and villages will, perhaps, never need to pay salaries to the members of their councils. All the people know what they do, and popular thanks and the honor of holding office may be sufficient to secure good officers. But the reasons seem to be decisive in favor of paying salaries to the Aldermen of other cities — if not a full compensation for the work they do, yet sufficient to enable an excellent class of men of limited means to give more time to the municipal service than they can afford to bestow gratuitously. There is need that the councils should be working bodies, and that the members should give much more time to city affairs than has generally been the case in American cities. The examples of English and German Aldermen in these regards may be studied with much advantage by American Aldermen.[1]

It may not infrequently happen that the question whether a citizen peculiarly competent for the office of alderman will accept it will depend on the fact whether it will give him the small salary he would need. If it be said that some of the most patriotic citizens would be more likely to accept seats in the council provided no salary were offered, we may suggest that they can always hand the salary over to some city charity. The payment of a compensation is generally found necessary and useful for securing the attendance at meetings even on the part of the rich directors of our great city banks and trust companies — none the less in substance a salary, because it is in the form of a payment cash in hand at every directors' meeting. On the whole, both justice and wisdom seem to require the payment of a moderate salary —

[1] See Chs. XII. and XIII.

say from $100 to $2000 a year — to the members of city councils.[1]

XIII

The matter of the clerk or secretary of the council deserves some notice. The designation of secretary is the most descriptive and desirable. As the council is made a continuous body, the old theory of a short term for this officer will no longer have even a specious appropriateness. The office of secretary under the councils proposed will be one of considerable dignity and great practical importance, requiring a man of much capacity and experience to discharge its functions. He should have no active relations with city party politics. It will be of great practical importance that he should be familiar with the records, usages, and administrative methods of all parts of the city departments. The fact that in New York City, and under the American party system generally, the city clerk is usually an active leader of a party, or political faction, while in English cities the clerk of the council is a non-partisan, competent, and trusted to draft city bills and ordinances, and to supervise other important matters, illustrates two profoundly different municipal systems. It hardly need be said that the public interests require that the Secretary of the Council should not be appointed or removed for party reasons, but should remain in office as long as he is both faithful and efficient. It hardly need be said that many reasons of convenience, economy, and propriety require that he should be both selected and removed by the council itself.

XIV

The question whether a city council should be a single body or should have two chambers is one of considerable

[1] But there should be a rigid rule requiring the reduction of a small fixed sum from the salary for every case of omission to attend at a council meeting, — or any part of it, — and there should be a record on its minutes of every such omission. No member whose failures to attend have exceeded a fifth of all the meetings should be eligible for nomination as mayor.

importance, as to which there has been much diversity of opinion in the United States. As municipal councils in this country have been moulded to a large extent after the analogy of Congress and state legislatures, it is not strange that they have often been given a bicameral form, though they might with quite as much fitness have followed the analogy of town meetings of which village and city councils have been the legitimate successors. The controlling reasons which require that Congress and state legislatures should have two chambers, do not, as we have shown, exist in city affairs. The most important matters before those bodies involve questions of policy and justice very differently affecting geographical sections and diverse productions and interests, by reason of which national and state representation itself is largely geographical. Careful comparisons of the conflicting interests and the diverse productions of widely separated regions are essential.

In a city council the whole representation — confined to a narrow sphere subordinate to the law-making power — relates to a region, open before the eyes of all its members, which is generally not larger than a town, and which, as a town, was governed by a single assembly. The main representation needed by a city is that of miscellaneous populations, business interests, and social conditions everywhere superimposed within the same narrow space, — a representation which, as we have seen, requires not two chambers but Free Voting. A great part of the action of a city council must relate, not so much to legislation, as to the management of business affairs, to investigations of official malfeasance, to the raising and disbursing of moneys, to the doing of the city work. Two houses needlessly complicate and obstruct such functions.

Sudden and inconsiderate doings can be prevented by rules of procedure and the requirement of large majorities for action. Men living along the same streets, who are interested in different kinds of business and city improvements, and who belong to different churches, parties, and social grades, should meet in the same council chamber face to face, and

engage in the same debates. In the main, experience seems to have justified this view of the subject, though Boston, Philadelphia, and St. Louis have bicameral councils. In all the cities of the state of New York the councils are single bodies, save in the new Greater New York.[1] It seems that of the 17 American cities having more than 200,000 inhabitants each, the council of 11 of them is a single body; of the 376 American cities having a population of more than 8,000 each, 294 have a council which is a single body; and so has almost every one of the 1600 other American cities.[2]

In no enlightened nation of continental Europe does there seem to be a single city which has a bicameral council. Among the more than three hundred cities of Great Britain, there is not one that has a council which is not a single body.

XV

Some considerations closely connected with the creation of a non-partisan council in a city may be mentioned here. The transition from city-party domination to any form of non-partisan city government will present considerable difficulties. Public justice and the public interests will require that the new city governments shall be framed without regard to mere party advantage, and in a way which in its practical effects will be fair to all parties. A dominant party in a legislature will find it no easy matter to act in this spirit. It may be the part of wisdom sometimes not to attempt radical changes in all the departments of a city government at once, but to place a few departments at first, and then more and more after experience, upon a non-partisan basis, until the complete transition shall be accomplished.

The fundamental theory and framework of a good municipal system may be outlined in the beginning by statesmanlike men who have carefully studied the municipal experience of the most enlightened nations; but the detailed structure and the exact definition of the powers of the departments

[1] 1 Bryce, *Am. Com.*, p. 632.
[2] Janes's *Problem of City Government*, p. 166.

and officers can be best set forth after public debates in a competent council, and perhaps after some experiments as to the effects of particular methods in practice. It would therefore seem wise, after agreeing upon the fundamental theory and framework of the new government, to confer upon the council such general powers as will enable it to regulate details and define the duties of minor officers. A charter should contain a statement of general principles and should confer general powers, in conformity to which cities should be allowed to regulate their own affairs. A charter should not be a code of ordinances, or embarrass the making of them by the council according to the provisions of the charter. It seems to be highly desirable that the new charter and municipal code should provide for bringing into the new council and departments, at least for a limited period, the most competent and reputable of the officers under the superseded system. Such a policy will not only greatly facilitate the transition from one system to another, but insure the new government at the outset some meritorious officers of tried experience.[1]

2. We cannot doubt that our suggestions for a city council will be criticised as being too complicated — and certainly a mayoralty despotism is much more simple. This criticism will come largely from two classes, — the mere politicians who favor absolute party rule, and the superficial thinkers who never comprehend the inevitable complications of great-city administration or the grave difficulties in the way of avoiding these evils. Still, we hope the candid reader, on careful reflection, may think that by getting rid of the party and primary system for nominations and elections, by electing fewer officers, by suppressing the numerous commissions and boards, by superseding many small districts, and by having the mayor elected by the council — as we shall suggest — the proposed plan for a council would not only largely super-

[1] Since these pages were written, the partisan legislature of New York, apparently in the hope of party advantage, has disregarded all such suggestions in creating the Greater New York City charter and government, with results thus far equally indefensible and unfortunate, which will be considered in our final chapter.

sede the vicious machinery of city government, but would really make it more simple, as well as diminish both its cost and its corruptions. We have not hoped to satisfy those who seriously think either that an autocratic mayor or city-party domination is desirable. A despotic government is naturally more simple than one based on justice and rational liberty. Everywhere the administration of cities is complicated and manifold in practical methods much in the degree that it is salutary and enlightened.

CHAPTER XII. — THE METHODS AND PRACTICAL RESULTS OF MUNICIPAL GOVERNMENT IN GREAT BRITAIN

Large English experience in city government. Bad city government in England before 1835. City interests had been sacrificed to national party interests. Municipal corporation act of 1835. It enlarged Home Rule, suppressed city-party domination, and greatly improved city government. The city council which the law provided for elects the mayor and practically controls the government. The English Mayor Purposes of law of 1835. The council with great advantage chooses some of its own members. Composition of the city councils and the official terms of the members. Considered an honor to be a member of an English city council. Corruption and partisan despotism no longer exists in British cities. Party tests for city offices discarded. English and American city theories contrasted. Theory that our more enlarged suffrage makes English experience inapplicable. Relation of civil service reform to municipal reform.

The consolidated municipal corporation act of 1882. The local government act of 1888 reaffirms the non-partisan principles of law of 1835. Local government of London under law of 1888. Provisions against corrupt use of money in city elections. The city council of London and character of its government. What it has done for London. The local government act of 1894. Effects of non-partisan city government on the voters. The city governments of England more democratic and republican than those of the United States. The governments of Manchester, Birmingham, and Glasgow, and what they have done. Relative cost of city government in Great Britain and the United States. Few special city laws and far less litigation in Great Britain than United States as to city affairs. The British police system and the police force of her cities. Conclusions from English municipal experience.

FROM considering our subject on the basis of American constitutions and principles, we turn to the experience of the older nations. Though every nation should frame its municipal system in the spirit of its own constitution and social life, yet from the very nature of municipal government its appropriate methods must have much in common in all enlightened countries. England in recent years has tried important experiments in the government of cities, with the result that her old municipal system, which we inherited, has been largely transformed and vastly improved. Municipal government has long commanded the thoughtful attention of English statesmen, while American statesmen have lamentably neglected the subject. The recent munici-

pal legislation of England has been framed in the light of the best experience of continental Europe, while that of the United States has rarely taken any notice of the improved methods of governing foreign cities. As early as 1835, when there were but a very few cities in the United States, there were 178 municipal corporations in England and Wales alone; and since that time — the urban population having constantly increased faster than the rural — there have been 125 such corporations added, with the result that in 1891 more than 11,000,000 of the English people, aside from the residents of London, were living in 302 cities, one-third of the whole population of England residing in cities of a population of over 100,000 each, and nearly another third in those of a population of over 10,000 each.[1] In such facts we can see how naturally the municipal problem long ago became seriously important in England.

Prior to 1835, the governments of English cities[2] had generally been as partisan, corrupt, and despotic, and the charters and laws controlling them were almost as divergent, as such governments and laws now are in the United States. The municipal condition was both a public scandal and a national peril.[3] National parties and great party managers in England had prostituted municipal powers, sacrificed the interests of cities, and controlled local administration largely for their own advantage, and anything like true Home Rule did not at that time exist. Professor Goodnow tells us that "the municipal organization was so bad, as the result of the prostitution of municipal institutions in the interests of the national politics of the country . . . that the care of the poor, the sanitary administration . . . and that of the schools . . . were put into the hands, not of the municipal authorities,

[1] Shaw's *Municipal Government in Great Britain*, pp. 14, 15, an instructive work of great value which every one interested in city government should read. Dr. Shaw has since published a similar volume on municipal government in Continental Europe. To distinguish citations from the former the name of the work is followed by "G. B."

[2] Cities in England are often referred to as boroughs, or even as towns, the City Clerk being sometimes designated the Town Clerk. Shaw's *Mun. Gov. G. B.*, p. 33.

[3] Shaw's *Mun. Gov. G. B.*, p. 26.

but of authorities established by special legislation. . . . Under the system of special charters municipal government had been sacrificed to national politics. . . ." [1]

This reads like a description of American experience in our day. It is worthy of special notice, here, that these chief evils of the American municipal system — party control, the prostitution of municipal affairs for the advantage of their managers, and the denial of Home Rule — were developed in England more than sixty years ago, when hardly anything like general or popular suffrage existed, and the aristocracy and the crown were dominant. It is thus demonstrated that *party government in cities, and not universal suffrage*, was the primary and controlling cause of these evils.

English suffrage has been vastly extended during the very period in which we shall find that these evils have been removed mainly through the suppression of party control and the establishment of non-partisan business methods in the government of English cities. All this improvement was accomplished when mayors were elected, as they now are in England, not by the people, *but by the city councils*, and these bodies were the dominating power in city governments — facts of obvious importance, when we come to consider how mayors should be chosen.

A thorough parliamentary investigation, in which patriotic and sagacious statesmen took part, was made into the sources of these evils, and concerning the best methods of city government elsewhere; with the result that an elaborate law, the celebrated Municipal Corporations Act of 1835, moved in Parliament by Lord John Russell, was enacted.[2] It is a model of sagacious and comprehensive legislation, and a noble achievement of non-partisan statesmanship.[3]

Dr. Shaw justly says: "This act of 1835 is the most signally important piece of legislation in all the history of modern city governments . . . and though there has

[1] Goodnow's *Home Rule*, pp. 14, 242-244; Shaw's *Mun. Gov. G. B.*, p. 26.

[2] Eng. Stat., 1835, Ch. 76.

[3] There had been a law on the subject enacted in the same spirit for Scotland in 1833, and one followed for Ireland in 1840. The great suffrage reform law of 1832 had facilitated municipal reform.

been much additional legislation, the general plan of 1835 remains unchanged, because experience has given it the stamp of thorough approval."[1] It is a law, in fact a sort of municipal code, of 269 sections, applicable to all the municipal corporations of England except London. It therefore not only superseded the need of special charters, but made interpretations by the courts generally applicable to all cities except London, thus in the outset avoiding such multifarious special litigation as has arisen in the United States out of our numerous special charters.

2. We have space for referring only to the fundamental provisions of this remarkable law, and must confine ourselves mainly to its bearings upon parties, party government, and Home Rule. It has greatly facilitated the extension of Home Rule, — a Home Rule which is much broader in English than in American cities, and it deserves the careful study of those who favor such rule. Professor Commons thinks that the superiority of English municipal administration has facilitated the granting of these larger powers for self-government.[2]

Almost the whole of the vast power to be exercised under this law is conferred upon a single body called the council. Three-fourths of its members, designated councillors, are to be elected by the people,[3] and the rest of them, designated aldermen, and equal in number to one-third of the councillors, are appointed — or we might say elected — into its own membership *by the council itself.* But both classes of members — councillors and aldermen — sit together as one body. They have equal rights — neither acting as a separate class, but each as equal members of the same legislative chamber.

The one body of mayor, aldermen, and councillors — con-

[1] *Mun. Gov. G. B.*, p. 225. Goodnow's *Home Rule*, pp. 242, 244.

[2] *Pro. Rep.*, p. 204.

[3] These elections take place in wards, but as the law allows residents of any ward to be elected — and such is a frequent practice — the representation is substantially that of the city at large. The law allows a considerable liberty in cities as to the number of councillors to be elected, as there may be from twelve to sixty-four of them according to the size or needs of the city. The discretion thus allowed the cities illustrates the large Home Rule powers accorded to them. Shaw's *Mun. Gov. G. B.*, p. 58.

stituting the council — is made the municipal governing authority.

The official term of the councillors is three years, and they are so classified that one-third of them goes out each year. The official terms of the aldermen are six years, and one-half retire every third year. Such terms of office obviously give great stability to the council, make it a *continuous* body, and cause mere party control to be extremely difficult. This provision for the appointment of one-fourth of the members of the council *by the council itself* has been found so salutary that it has been incorporated into all extensions of England's municipal system, and has now been enforced for more than sixty years.

3. The council elects the mayor annually from among its own members, and he is its presiding officer or speaker. There seems to have never been a mayor elected by popular vote in Great Britain. The council possesses the power of appointment and removal, and takes responsible control of all parts of the municipal administration, supervising it through its standing committees. The council also makes all the ordinances or by-laws, — in other words, it possesses and exercises the whole legislative or ordinance-making power of the municipality; and this power is much more comprehensive than that allowed to American cities.[1]

The mayor has no veto power, but, as the presiding officer of the council, he naturally has great influence over its proceedings. He is not elected to bring in a new policy, to represent a party, or to dominate the council, but to preside in its meetings, and to take the lead in carrying its policy into effect. No one under this law can reach the mayoralty until he has won the approval of the members of the council by service among them. The mayor, says Dr. Shaw, is a "man who has served his town (city) with ability and zeal as councillor and alderman."[2] The members of the council —

[1] But the power of the council does not extend to judicial affairs. In England no judicial officers are elected, but all such officers, even justices in cities, are appointed — a method which keeps them out of partisan politics.

[2] *Mun. Gov. G. B.*, pp. 53, 54.

representing as they do all classes of the people and serving as they generally do many years in their offices — are familiar with city affairs and interests, and are regarded as most competent to decide who is fittest among their members to have the lead for the advancement of good government. Hence the reason why they elect the mayor and from their own membership. The practice of electing mayors from the council strongly tends to bring able men into that body.

The practical work of the city is carried on by a body of skilled officials who are appointed and retained for merit in the main irrespective of party considerations. The mayor serves on committees, is the official head of the governmental action of the city, and has various incidental powers. His office is one of great honor and dignity. Standing committees of the council have special authority and duties in the supervision of different branches of the administration in connection with which they are very active.[1]

4. It is obvious that such a system tends to concentrated vigor and harmony throughout the administration; yet it allows the people to constantly mould it according to their views by bringing new members into the council. We can better judge of the merits of such a municipal system after we have looked into its practical effects. It hardly need be said that it would be easy to increase the power of the mayor to any desirable extent, should the other parts of the English system be approved. But, before considering this matter, it will be useful to study the manifold variety of powers exercised by mayors in the great cities of continental Europe, a subject which will receive our attention in the next chapter.[2]

5. Among the purposes of the law of 1835 these seem to be pretty clear: (1) to arrest mere party control of cities and to govern them through public opinion, — a result which the classification of the terms of office and the choice of one-

[1] *Mun. Gov. G. B.*, pp. 27–32, 46, 61–78.

[2] An amendment to the law of 1835, made in 1882, allows the council to select a mayor outside its own membership. This enables mayors of small cities who have shown efficiency to be elected mayors of large cities, as is sometimes the case also in continental Europe. But Dr. Shaw says "the practice remains as before in England." *Mun. Gov. G. B.*, p. 31.

fourth of the members of the council by the other members of the body greatly facilitates — as we have before explained ;[1] (2) to bring the mayor and councils into harmonious and vigorous coöperation ; (3) to avoid a mere partisan election of mayors ; (4) to secure experience and skill on the part of city officials by keeping them an adequate time in office ; and (5) to prevent the gaining of control of a city government as the result of any single victory by a party or faction. For it is plain that two successive victories at the polls are necessary to change a majority of the members of the council, and that one-half of the aldermen can be changed only once in three years ; yet public opinion can always be a potential force with this non-partisan council. These provisions naturally discourage, as they baffle, the efforts of party managers to make city government promptly serviceable for their own ends by capturing patronage as the result of a single party victory. Parties, if they get their candidates elected, cannot, says Professor Goodnow, make use of their power for party ends.

6. This unique experiment of non-partisan city government was speedily successful. Party despotism and corruption in city affairs were in the main promptly suppressed and have never been reproduced. The selection of aldermen by councillors brought worthy and able men into the municipal service, and the six years' term for aldermen gave them experience adequate for devising a large, wise, and consistent municipal policy.[2] The council and the mayors have coöperated harmoniously in the execution of such a policy in ways we have no space for explaining in detail, but we shall present the general results.

To serve in the city council soon came to be regarded as both an honor and a duty by citizens generally, and such has been the accepted view down to the present time. No truth, more than this, deserves the thoughtful consideration of the friends of municipal reform in the United States. "To be a

[1] See Ch. IX.

[2] Dr. Shaw has shown the good results from this method of electing the aldermen by the councillors. *Mun. Gov. Cont.*, p. 315.

member of the . . . council," says Dr. Shaw, "is to hold a position of honor, a position which no man affects to despise; . . . the councils are almost universally in high repute. . . . The councillors as a rule are representatives of the best elements of business life. They are men of intelligence, character, and of practical conversance with affairs. . . . By the common consent . . . of the community none but men of worth who have made their way to a good standing among their neighbors are regarded as eligible for the council. . . . The whole system is favorable to the election and retention of capable and honest men."[1] He does not doubt that numerous individual facts might be arrayed against this view — but nevertheless says it is just as a whole.

"It is generally agreed," says Professor Commons, "that the government of English . . . cities is superior to that of American cities. Public officials are renowned for their honesty, efficiency, and the economy of their administration. The municipal councils include the best and most intelligent citizens who serve without salary."[2] Mr. Conkling refers to "the superiority of the rulers of English cities over those of the New World."[3] Mr. Fox says "the curse of the spoils system . . . seems to have been thoroughly stamped out in England."[4]

7. Under the reformed system, the cities of England have been governed, not mainly by their partisans or by party opinion, but, with small exceptions, by competent citizens and by public opinion. During the more than sixty years in which the municipal system established in 1835 has prevailed, no great scandal or corruption has disgraced the administration of English cities. That there have been minor abuses and various attempts at party dictation in English cities under the new system is undoubtedly true. Yet the general facts have been these: that for more than sixty years municipal government in England has been non-partisan; that is, has been far more honest, economical, and

[1] *Mun. Gov. G. B.*, pp. 53, 54.
[2] *Pro. Rep.*, p. 203.
[3] *City Gov.*, p. 216.
[4] Fox's *London Council*, p. 90.

efficient there than it has been in the United States; that it has been managed by competent and upright men with little regard for party politics; that the English people are satisfied with it, and regard its form in the main as beyond controversy; that hardly any part of the public administration of England has been purer, abler, and more respectable than that of her cities, and much the same may be said of Scotland. Dr. Shaw[1] shows how completely the national parties of England have failed in their attempts to capture or dominate her city governments. Mr. Bryce, the author of the *American Commonwealth*, says, "with us in England or Scotland, it makes little or no difference to which political party the person chosen to be mayor or provost belongs. . . ."[2]

8. Nevertheless, the horde of our scheming city politicians and partisans, more or less excusable by reason of their ignorance of municipal history, loudly declare that parties alone can give us good city government, and that the attempt to profit by English experience is to ape the vicious methods of an aristocracy. We are frequently admonished by many good people that universal suffrage, which doubtless makes our problem more difficult, is the primary cause of our municipal evils, and that the only hope of reform is through party-elected mayors, wielding despotic — if we should not say, semi-royal — power. Yet the simple truth is that, in the sixty years within which the great municipal reform of England has been matured, suffrage has been made more than threefold more extensive relative to the number of the people there than it was in 1835, and mere

[1] *Mun. Gov. G. B.*, pp. 46–52.

[2] *Contemporary Review*, November, 1897, p. 751. The London Council, which controls interests almost vast and diverse enough to form a basis of legitimate parties confined to city issues, has shown some tendency toward such results, the inchoate organizations being known as Progressives and Moderates. Under governments like those of the English cities no danger need be apprehended from such divisions. *Mun. Gov. G. B.*, pp. 250–252. Even a New York boss and a Tammany machine could not get enough patronage and spoils out of such a government to keep vicious city parties alive. Besides, a city party based on principle and real municipal issues is legitimate and would do no serious damage. In the election for the London Council in the winter of 1898, neither party gained any decided advantages, and the result was favorable to non-partisan, municipal interests.

aristocracy and royalty are now far less potential than they were at that date. English city government, as we shall soon show, now gives better protection to the poor and humble than do the city-party governments of American cities. No autocratic mayor, no mayor elected by the people, no city-party government, had any part in achieving this great English reform. Nevertheless, American Republicans and Democrats are clamoring for such proscriptive, party rule and for such autocratic, semi-royal mayors for their cities as neither England nor any enlightened monarchy would tolerate.

9. It has been often said that the experience of England, in the government of cities, is inapplicable to the cities of the United States because in the former suffrage is more restricted than in the latter. This is a very superficial statement of the matter. Had it been declared that the greater expansion of suffrage in the United States than in England has much increased the difficulty of municipal reform, and has made more drastic remedies essential for suppressing party despotism and personal corruption in American cities, the declaration would have been quite true.[1] This truth does not make that experience and the methods which it illustrates inapplicable, but merely inadequate — leaving it necessary that they be supplemented by further remedial measures of the nature we have proposed. The more illiterate and degraded persons are allowed to vote, the more serious is the municipal problem, the more easily demagogues and bosses can prevail, the more readily city officers can betray city interests and prostitute municipal authority. If we were to allow the franchise to mere children and tramps, — to prisoners in their cells and to immigrants on arriving at the docks, — is it not plain that every one of the precautions taken by England, as well as those in addition which we have suggested, would be made all the more indispensable? Those who think that our popular suffrage cannot be trusted to

[1] This view of the matter is finding acceptance with our most thoughtful students of municipal science. Speech of Horace E. Deming, *Lou. Conf. Proceedings*, May, 1897, p. 100.

elect a council which is competent to elect a mayor, strangely enough think it can be trusted to elect the mayor directly. The difference between the franchise in English and American cities is much less than seems to be generally supposed. The municipal franchise in England is broad enough, says Dr. Shaw, "to include every family that lives or does business in a town (*i.e.* city), except those who are paupers. The acceptance of public relief disfranchises only for the following elections."[1] It is said that "in New York one person in six is a voter, in Glasgow one in nine, in Berlin one in eleven." France has a wider municipal suffrage than Germany or England.[2]

10. A more comprehensive and rigid enforcement of the methods of civil service reform, ballot reform, and corrupt practice reform in the national administration of England than in the administration of American states has made municipal reform easier in the former than in the latter; but all this has been done by methods equally appropriate in both countries. It is an interesting fact — so salutary had been the English municipal system established in 1835 — that party patronage in cities had been largely eliminated by it before the civil service reform methods began to prevail about twenty years later; and these methods have had only a limited part in mere municipal administration — absolutely as they have prevailed in national affairs.[3]

[1] *Mun. Gov. G. B.*, p. 30.

[2] Commons's *Pro. Rep.*, pp. 202, 203.

[3] Yet, civil service reform examinations were introduced into parts of the administration essentially municipal earlier and have had a more important effect than perhaps might be inferred from some of Dr. Shaw's language. See *Mun. Gov. G. B.*, p. 66. These examinations were introduced into the poor-law and educational administration with very salutary effects, as early as 1834. Eaton's *Civ. Service in Great Britain*, p. 157. Nevertheless, the alleged inapplicability of English experience to American cities remains available for two classes of persons disposed to make the most of it: (1) for those who hope to aid our party system by appealing to prejudice against English methods; and (2) for those who, lacking the patriotic devotion needed to stand up for a non-partisan and difficult reform, welcome every specious excuse, however intrinsically absurd, for neglecting it.

II

In 1882, when this law of 1835 had remained in its main features unchanged for forty-seven years, the subject of municipal government again received much consideration in England — coming before Parliament in reference to a general revision of municipal laws. City government in other countries was carefully investigated in aid of improving English laws on the subject, — Englishmen, unlike many American politicians, seeming to be willing to learn something useful from other nations. The result was the enactment in that year of an elaborate Municipal Code largely based on the law of 1835, which deserves the careful study of every friend of municipal reform.[1]

This act left the fundamental provisions of the law of 1835 — the terms of office, the mode of selecting the members of the council, the method of choosing the mayor and aldermen, and of carrying on the city government — unchanged, because no better results could be expected from different methods. Six years later, an English law provided for a considerable measure of local self-government in English counties, and London was made a county for the purposes of the act.[2] The authority conferred by it, which is in substance municipal, is to be exercised in each county by a council made up of councillors and aldermen — the former choosing the latter. The methods of selecting them, their terms of office and their modes of action are, in principle and very nearly in details, identical with the provisions cited from the acts of 1835 and 1882. The chairman of the County Council — the equivalent of a mayor — is made elective by the council itself. The same purpose of relying upon public opinion and a patriotic sense of duty, and of excluding party control shown by the former laws, thus reappears in the latter.[3]

[1] Known as the "Consolidated Municipal Corporations Act." Laws, 1882, Ch. L., an act of 257 sections, filling 97 pages of the statutes.

[2] Local Government Act, Laws 1888, Ch. XLI.

[3] Goodnow's *Comp. Adm. Law*, pp. 254–257.

2. The new local government for London was established in 1889, under this law of 1888, which confers ample municipal powers. The municipal franchise of London, says Dr. Shaw, "includes every one who rents a place for his family, even if it be only a small room in the garret or cellar of a tenement house, . . . the chief disqualifications are receipt of public alms and failure to pay rates which have fallen due;" and any male resident of the metropolis who is entitled to vote is eligible to election. If so comprehensive a franchise does not make a basis for all the difficulties of city-party government in American municipalities, it goes very far toward it. A resident in any part of London may be elected to the council by any of its districts; and the same rule prevails in other English cities — this general liberty being regarded as favorable to the bringing of able and well-known men into the city councils and being approximately the equivalent of elections at large.[1]

3. The provisions against the corrupt use of money in city elections in England are much more stringent than the corresponding provisions in the United States. For example, in no event may a candidate for the London Council expend more than $125 upon his election and three pence in addition for each voter above the first five hundred. These expenditures must be made through authorized agents, who must make itemized reports to the candidates, and the latter must render a complete return of the expenses incurred in his election.[2]

4. It would be interesting to set forth in detail the practical effects of this non-partisan, London system, but our limits forbid more than a very few facts. In no English city were the difficulties to be overcome in the way of reform greater than in London; and everywhere the triumph of the non-partisan system seems to have been as complete as in the metropolis. The London Council is composed of 118 councillors elected by the people for terms of three years, one-third being renewable each year. These councillors are authorized to elect into their own body nineteen other members

[1] Shaw's *Mun. Gov. G. B.*, pp. 36, 222, 242-246. [2] *Ibid.*, p. 246.

known as aldermen, for terms of six years, according to the methods we have before explained. "The first London Council," says Professor Shaw, "possessed as high an average of ability and distinction as the House of Commons." All administrative powers are vested in the council. It elects the mayor. It works through standing committees, each of which supervises some branch of the administration.[1] Two women were elected among its members, and one was appointed as alderman of the first council, but it has since been decided that they were ineligible.[2]

These methods of selecting the members of the council not only brought into it men representing all classes and the great business interests, but also men of large experience and high character and capacity who added much to its prestige. Mr. Fox, who has made a careful study of the London Council system, says that the choice of aldermen by the councillors makes it "possible to call into the municipal service men of larger experience and expert knowledge, who would not care to enter into the turmoil of popular election contests, but who are ready to heed the call of the municipal council," — a result which we have suggested as very natural. He tells us that, through this means, the first council gained several invaluable members. Among them were Mr. Farrer, the eminent economist, who was for many years Secretary of the National Board of Trade, and Lord Welby, formerly permanent Secretary of the Treasury. Dr. Shaw expresses much the same views as to the usefulness of the experienced men thus brought into the councils.[3]

[1] Shaw's *Mun. Gov. G. B.*, pp. 242-246.

[2] See George L. Fox's article, *Yale Review*, May, 1895 — an excellent account of the council. Englishwomen of capacity take an active part in municipal reform.

[3] *Mun. Gov. in Cont. Europe*, p. 315. The author has thoroughly discussed this subject with Dr. Shaw, and the latter has authorized him to print the following as a part of this note: "He is quite ready to admit that, with general ticket elections and a system of minority representation under conditions prevailing in the United States, some plan such as the author advocates might prove exceedingly advantageous. Certainly Mr. Shaw would disclaim any intention to have his position on that subject appear to be opposed to Mr. Eaton's, and he would be entirely ready, in future editions of his own book, to make qualifications which would avoid any seeming difference of view, in so far as the lessons to be derived from English experience are concerned."

It is as unimaginable that such men should be willing to be members of American city councils as now constituted, as it is that the partisan managers of their affairs should fail to fiercely oppose their election.

5. The membership of the city council of London seems to have fairly represented its people. John Burns, the great labor leader, many plain citizens, eminent bankers and merchants, able writers, members of the nobility, and Mr. Frith, the distinguished London reformer, sat together at the council board. Its first chairman, or mayor, was Lord Rosebery, late English Prime Minister; its first vice-chairman was the eminent scientist and statesman, Sir John Lubbock; its deputy chairman was Mr. Frith.

The council was not an ornamental, but a remarkably laborious, body of men — and they served without salaries. Many of them gave most of their "time to the municipal service, while the whole body . . . composed of men who for the most part had private business or professional duties . . . gave an average of one-third of their working time to council and committee meetings and to labors connected with the public affairs."

Here we have striking, and we may add encouraging, evidence of the fact that busy men are ready to serve the city faithfully and patriotically, if they are allowed an honorable opportunity of doing so, and the disgrace in which partisan politics have involved city affairs shall be removed. One committee, — that on Parks, and a fairly typical instance, — says Dr. Shaw, held in the first year 210 meetings. Nor are these the most remarkable facts. "At the end of its three years' work, the first London Council had so conducted itself that its friends could say, without contradiction, that through all these years of administrative labors, as complex and confusing as ever fell to any governing body in the world, not one breath of scandal, no shadow of a shade of personal corruption, has attached to a single member of the council."[1] "Up to this time (1896)," says Mr. Fox, "the

[1] Shaw's *Mun. Gov. G. B.*, pp. 242-249.

record of the council, so far as corruption is concerned, is practically stainless." And so, we may add, it is up to 1898. Such are some of the results of a municipal system which does not make an autocrat of the mayor, elect him by a party vote, or cause the rich and prominent citizens to do little or nothing but "hold him responsible for good city government" — which they never get.

6. If we are not ready to admit that a non-partisan system which produces such results deserves our serious study, it must apparently be because we are content under our municipal shame, or have surrendered to utter despair. We ought, then, to be willing to admit virtues either in a monarchy, or in the English people, which the people of the United States have no hope of ever rivalling. Though the despair and demoralization which our old party system has caused might, for a time, prevent so salutary results in the United States, can any true American doubt that his fellow-countrymen are able, in the long range under a non-partisan system, to rival the best achievements of Englishmen in municipal government?

7. At the second election of the London Council, held in 1892, men of the same high character and capacity, as at the first election, were chosen. The non-partisan principles upon which the council is based again triumphed, sixty per cent of the former members having been reëlected. There was nothing like a party victory achieved, though the country was agitated by strong party feelings, and a parliamentary election was expected soon. In six of the fifty-eight voting constituencies of London there were not even contests at the polls, so controlling was public opinion.[1]

It is the opinion of Dr. Shaw that the practice which prevails in other English cities, of reëlecting good members of the councils, term after term, irrespective of party politics, will become the practice of London — an opinion which

[1] Under the English Municipal Code, when by reason of the candidates being satisfactory, or no more being nominated than there are places to be filled, no voting takes place, the law providing that such nominees shall be declared elected.

seems to be justified by the last elections of a London Council in 1895 and in 1898.[1] The ability of the council elected in 1895 is illustrated by the fact that two of its members have just been given seats in Lord Salisbury's Cabinet. "The personnel of all the councils," says Mr. Fox, "has been notable and of high quality, and in each council several ex-members of Parliament have had seats."

III

1. We can only refer in the most general way to the comprehensive measures, well explained by Dr. Shaw, which the London Council is now engaged in executing for the improvement of London — measures the adoption of which in any American city would begin a new municipal era. The policy of the council for improving the health, the recreation, the morality, and the comfort of the laboring population, as well as for the better treatment of the insane, are comprehensive and enlightened.

New York City has lately opened several very small parks in the densely populated sections of the city, but the acts of the London Council in this regard make these New York reforms seem trifling indeed. For example, it has removed more than five thousand people and more than seven hundred buildings from fifteen acres of ground, and upon most of this ground it proceeded to open new streets and build model houses. The residents of an American city could hardly see what this council has done for the improvement of the playgrounds and parks of London without wonder,[2] if, indeed, without envy and something like despair.

The provision which the London Council has made for the rational amusement of the people seems to far transcend anything of the kind ever attempted in an American city: 250 cricket pitches where 6000 matches have been annually played; 300 tennis courts annually used by over 100,000 players; and 75 football grounds where about 5000 games

[1] Shaw's *Mun. Gov. G. B.*, p. 250.
[2] Shaw's *Mun. Gov.*, pp. 288–320.

are annually played: these are illustrations mentioned by Mr. Fox.

The council is highly effective, he says, in securing proper legislation for London, "standing as the champion of the many, and especially of the poor, against the vested interests and private greed." Another result of the management of the council has been remarkable. Its business methods have been so good that it has quite generally been able to do the city work by its own workmen at less cost than would be the result of having it done by contractors who secured it through competitive bids; and such seems, to a large extent, to be the case in other English cities.[1]

Mr. Fox tells us that the council has done much to awaken the sense of "civic duty and municipal patriotism in the citizens of London, . . . while to young men who look forward to a political career, efficient service in the council is an excellent pathway to the House of Commons." Professor Commons has noticed the tendency of non-partisan city government to develop public spirit.

2. When such have been the consequences of non-partisan methods in city government, we cannot be surprised at the English system of Free Voting and Free Nominations which we have described.[2] But we may well think it more natural that a republic rather than a monarchy should have given birth to methods so liberal and just. In voting for members of the school board of London, each voter may cast five ballots; and in electing the members of the school board of Glasgow he may cast fifteen ballots, and distribute them as he pleases.[3] In other cities the number of his votes will be, as they are in London and Glasgow, the same as the number of the officers to be elected at the same time — being different in different cities.

3. Our references to the municipal codes of England which have made special charters needless would be imperfect without some reference to the elaborate local government act of 1894.[4] This comprehensive law, bringing under

[1] Shaw's *Mun. Gov. G. B.*, pp. 315, 316.
[2] See Ch. IX.
[3] Shaw's *Mun. Gov. G. B.*, pp. 40, 305–308.
[4] Laws, 1894, Ch. 73.

uniform provisions the fifteen thousand parishes and other English jurisdictions below the grade of cities, applies to them, so far as their needs require, the non-partisan principles and methods which we have considered. It provides for local councils with considerable authority for Home Rule.[1] A law similar to this, for the uniform government of the villages and towns of our American states, would be a great public blessing by avoiding vast numbers of special laws and much needless litigation. This law not only makes judicial decisions interpreting its general principles applicable to all jurisdictions appropriately subject to them, but it authorizes the summary submission of disputed questions to courts mentioned in the act. Section 70 declares that "if any question arises or is *about to arise* as to whether any power, duty, or liability, etc., . . . under the law is vested as it purports to be, the council may cause the question to be summarily submitted to the High Court, which, after hearing such evidence and parties as it thinks just, may decide the question." This seems to be a very convenient and useful way, though hardly known in the United States, of determining doubts as to the meaning of municipal codes, which can be made to avoid, by timely decisions, much vexatious uncertainty and expensive litigation.

4. We have considered the theoretical reasons[2] which seem to make it probable that a non-partisan city government, based on business needs rather than on parties, would diminish the inducements to vote and to be active in city politics on the part of the most depraved and venial classes. In the experience of England we find these anticipations verified. Comparing the English with the American system, Dr. Shaw says "there is much less in the English system . . . to tempt unworthy men into the council for purposes of gain, . . . very remote chances of profit through contracts or jobbery of any kind."[3] "The exploitation of the votes of the ignorant, vicious, and indifferent in English cities by demagogues or party agents is so extremely difficult

[1] Shaw's *Mun. Gov. Cont. Europe*, p. 164. [2] See Ch. IX.
[3] *Mun. Gov. G. B.*, p. 55.

that it does not count for anything at all in the election results. . . . The residents of the slums, . . . though registered by the public officers, . . . *do not care about voting*, and are a neglected field so far as political missionary work goes."[1] And what more natural than this? Vile and corrupt voters will not go to the polls for any honest or patriotic purpose. When neither the council itself nor any considerable patronage or spoils can be captured as the result of a single party victory, the party managers will not pay the vile classes to go and vote. Under party government, in most American cities, it is party money, party patronage, party bribery, party coercion, and party agents which cause the vast majority of the vile voters to go to the polls, who but for such influences would never appear there. Few lessons which the experience of the older nations can teach us better deserve our profound attention than this. It shows us how some of the evils incident to universal suffrage may be greatly mitigated, and how we may make the higher public opinion more potential in American cities.[2]

IV

Were it not for a false and unfortunate belief on the part of many Americans that their own cities are as well governed as those of any other country, and a self-conceit on the part of some of them which will accept no proof to the contrary short of a demonstration, we would gladly omit further reference to municipal government in England.

There seems to be a prevalent belief in the United States that what is apparently most superior in the city governments of Europe is devised for the advantage of the aristo-

[1] *Mun. Gov.*, pp. 45, 77. Careful inquiries made by the writer during several months' sojourn in England have led him to the same conclusions as those expressed by Dr. Shaw.

[2] The sanitary and police administration of English cities — to be subsequently considered — deserve the careful study of American municipal reformers. Nearly thirty years ago the author investigated sanitary administration in England in endeavoring to qualify himself for drafting the bill which became the New York Metropolitan Health Act of 1866, and he was much indebted to English precedents.

cratic classes. This is an unwarranted assumption. The facts are that, in the main, the municipal methods of the foremost city governments in Europe, and especially those of England, are democratic in theory and republican in their tendency; they are conceived and executed in a spirit favorable to universal education, comfort, and safety, promoted at the public expense — even in a degree as yet hardly attained by any American city, and rarely imagined by men who are almost blind to what is good in other nations. Professor Commons, speaking of English and German cities, says "they have promoted, much further than American cities, many public services, for the wants of the . . . masses, such as parks, . . . baths, water-supply, and many others."[1]

We shall, by reason of such considerations, state in some detail facts which illustrate the governmental action of English cities, selecting for this purpose three cities, — Manchester, Birmingham, and Glasgow, — not because they are peculiar, but because they may fairly speak for the others. We hope the city reader, as he proceeds, will compare the doings of these cities with the municipal achievements at his own doors, asking himself whether the kind of city government, of which these doings are the result, is not one suitable for an American city.

Manchester. — It is a city which has a population not much exceeding five hundred thousand inhabitants, being not far from the size of Baltimore. It has a council of the kind we have explained, and the council elects the mayor from its own members. The supervision of the city administration — as in other English cities — is directly in charge of various standing committees of the council, of each of which the mayor is *ex-officio* chairman. Manchester has long operated its own Gas Works, not merely making gas for its public supply, but for private use at low rates. These Works not only pay interest on the investment, but a large profit into the city treasury. The city also supplies electricity both

[1] *Pro. Rep.*, pp. 203, 204. Mr. Frank M. Loomis, in an instructive essay, recognizes the democratic spirit of the legislation referred to in the text. *Lou. Conf. for Good City Gov.*, May, 1897, p. 114.

for public and private use; it — through its waterworks — operates a station for the supply of hydraulic power; to the great advantage of its people, the city manages the municipal markets and abattoirs, from which a large revenue is derived;[1] more than forty miles of lines of city railway — on which cheap rates are insured to laborers — are the property of the city of Manchester, which derives more than ten per cent annual interest from its investment in them.

The city has comprehensive arrangements for the burial of the dead in its own cemeteries, where the poor can have burial at reasonable rates. Dr. Shaw says Manchester "has met the problem of garbage more successfully than any other city of the world." It maintains public assembly rooms, in different parts of the city, which are rented for any proper purpose at reasonable rates; the corporation has a noble city hall — which it built economically and without causing scandal — at a cost of $5,000,000; the city has several other town halls which are rented; it has eight public baths, constructed at a cost of nearly $100,000 each, and connected with each of them is a public gymnasium, and some of these establishments have also assembly rooms.

The city, by taxation, has provided public libraries which contain 250,000 volumes distributed in some fifteen branch libraries open from early morning until 10 P.M., and some of them are supplied with the city periodicals and newspapers. The city supports (1) technical schools for the instruction of workingmen's sons in crafts and industries; (2) a school of art and design; (3) technical schools covering instruction in spinning and weaving, in literary and commercial subjects, in elementary science, and in many practical subjects, including dressmaking. Manchester supports a municipal Art Gallery; it provides music for its parks; it employs an organist who gives frequent concerts in the Great Hall of the Municipal Building; and lastly, it may be mentioned

[1] We believe it would be disastrous for American cities to attempt such public works — and others we shall refer to as common in the cities of England — until municipal government shall secure a superior class of city officers in the United States.

that Manchester has recently furnished $25,000,000 toward completing a great ship canal, opened in 1894, in aid of its commerce.[1] In 1895 Manchester completed what is said to be the most magnificent storage warehouse in the world to be used in connection with that great undertaking.[2]

Birmingham. — Its population of over 450,000 is not far from that of Boston. The city of Birmingham owns the municipal Gas Works — acquired at a cost of nearly $10,000,000 — which give a supply of gas at moderate rates, and pay a large annual profit to the city treasury. Under a comprehensive law, the city recently acquired about 90 acres of land covered with about 4000 houses in the worst part of the city, and has caused improved buildings to be erected in their place with great gain to the public health; the city has erected and rents model cottages; it has a successful sewage farm of 1500 acres; it has many furnaces for consuming its garbage; it manufactures fertilizers, and owns and operates about 40 canal boats for their transportation and sale; it consumes its coarser garbage in about 50 furnaces; it maintains cemeteries similar to those of Manchester; under its admirable sanitary administration the annual death rate of the city has been reduced to twenty in a thousand or less; it maintains public baths on a large scale, even providing Turkish baths for those willing to pay for their use;[3] the city has provided a public library of 200,000 volumes, with many branches; it has a municipal Art Gallery; it maintains a central School of Art with several branches, some of them mainly for night schools for the working classes; the city has well-equipped technical

[1] Shaw's *Mun. Gov. G. B.*, pp. 145-167.

[2] *Annals Am. Acad. Pol. and Soc. Sci.*, November, 1896, p. 152.

[3] An elaborate report made in 1897 by a committee appointed by Mayor Strong of New York strikingly illustrates the priority and the great superiority of English cities in the matter of public baths and other agencies for promoting public cleanliness, health, and comfort. It says that Liverpool had public baths in 1828; that an English law was passed for the creation of such establishments in 1846; that New York City did not have free public baths until 1870; that the public baths and washhouses of Newington, England, — a place, perhaps, of which the reader has never heard, — are such as no public bathing establishments in the United States have even approximated to.

schools; it owns street railways, operated by horses and by steam, the admirable regulation of which Dr. Shaw says "would amaze an American community." Birmingham owns the city markets, which are a source of profit. Speaking of city expenditure as a whole, Dr. Shaw says it has "been made more advantageous by far than any private firms or companies could have effected it. . . ."[1] We have before called attention to the general fact that city governments in England are able, through their own employees, to do the city work at less cost than private contractors can do it — a result of far-reaching significance, and a fact almost unimaginable in the United States.

Glasgow. — It could supply us with facts similar to those given relating to Manchester and Birmingham, but we cannot spare the space for them, and shall select those of a different character. The city clerk of Glasgow, instead of being a cunning partisan manager, is an eminent, widely known authority concerning municipal law and history, who advises the city council, drafts the city's bills, and takes charge of them while they are pending in Parliament. Glasgow was formerly a city conspicuous for its crowded tenement houses and its high death rate. Its recent sanitary policy has been enlightened and salutary. The city has a vigorous system of "female visitation" among the poor; not only are all milk-shops registered by the city, but the farms from which milk is supplied for them are registered and inspected. The city maintains "sanitary washhouses," where articles likely to spread disease are disinfected and cleansed; it has provided a house of "reception," where persons may stay while the disinfections of their homes are made; under a sanitary system thus illustrated, the death rate of the city has been steadily decreasing. The city owns a farm and seven hundred railway wagons used in aid of its very successful street-cleaning operations, the materials from which are distributed into fifteen counties; the city, several years ago, purchased *eighty-eight acres of houses and lands* in its worst quarters, laid out many

[1] Shaw's *Mun. Gov. G. B.*, pp. 168–193.

new streets, widened others, and erected much better buildings upon them at an outlay of about $10,000,000; it has also built many improved tenement houses — zeal for the health and comfort of the people having, perhaps, for a time gone beyond the dictates of financial thrift.

The city has provided several large model lodging houses, which are a great success, both financially and in aid of morality and order; it has five large establishments for public bathing, at which the water is kept at a uniform temperature through the year, and each has connected with it an extensive and amply equipped washhouse for use by the families of the poor, who pay a trifling sum for this provision in their behalf.

"The police force of Glasgow — which no mayor controls and no party boss or politician meddles with — is," says Dr. Shaw, "of excellent character, and as a rule is faithful; . . . it is universally praised by the citizens; and complaints . . . such as one hears in any American city are unknown. . . ."

"All the slaughtering in Glasgow is done in the public, municipal slaughter houses, . . . and the city owns public markets" as well, which yield a net income. The city has almost wholly escaped scandals and the imputations of jobbery in connection with its contracts.[1] Within the last two years the city of Glasgow has erected a "Family Home" in aid of certain classes of the deserving poor, which is now in successful operation; and it has also purchased the city railways, which it now operates at a profit, though the fares for workingmen have been reduced. The city makes its own gas and sells it at so low a rate that many families have abandoned stoves and use gas for cooking purposes.[2]

V

We cannot enter much into the relative cost of city government in England and the United States. Dr. Shaw says that the citizens of English towns — meaning cities —

[1] *Mun. Gov. G. B.*, pp. 69–144.
[2] *Annals Am. Acad. Pol. and Soc. Sci.*, November, 1896, pp. 149–151.

"obtain far more than Americans for the money they pay to the taxgatherer is a proposition too obvious to admit of any discussion." [1] It is hardly within the scope of our inquiry to attempt to estimate the relative number of municipal laws, or the amount of litigation which has grown out of them in recent years, in the two countries. We have seen that the English municipal codes to a great extent supersede the need of special city laws, and that municipal litigation is reduced to a minimum.[2]

After some inquiry, we think it would be safe to say that within the past twenty years there have been from thirty to fifty times as many pages of municipal laws enacted in the state of New York as in Great Britain, and that the comparative amount of litigation arising out of municipal matters in the two jurisdictions has been much in the same proportion.

VI

A few words should be added concerning the British police system. We have referred only to the police force of Glasgow, but what is said of it is in substance applicable to policemen throughout Great Britain, who seem to have no relations with party politics. "The complaints and suspicions," says Dr. Shaw, "so commonly directed against the police authorities of American cities are almost unknown in England. At least they exist only in a very slight measure." That such were the facts a few years ago, and that policemen commanded general confidence and respect, the writer is convinced from his own investigations.

There is another view of the British police force which should be mentioned here, and it will receive further notice in a subsequent chapter. The members of this force, like the judges, are regarded as being, in a large way, national officers, and consequently the regulations controlling them

[1] *Mun. Gov. G. B.*, p. 320.

[2] Mr. Conklin tells us that no two of the charters of the 32 cities in the state of New York are alike; that each has a different method of bookkeeping; that in ten years — 1880 to 1890 — the charter of New York City was amended 390 times and that of Brooklyn 196 times. *City Gov.*, pp. 17, 18.

are — like the criminal law — required to be in their leading provisions uniform for all cities. There is, in England, a general law or code on the subject, with special provisions applicable to peculiar needs and conditions. Few things can be clearer than the right and duty of the state to see that the police laws, as well as the criminal laws, are everywhere fairly and uniformly enforced. England as a nation acts on this view, requiring the police force in every city to be up to the fixed standard of capacity, discipline, and fidelity which she prescribes — a requirement which she enforces not only by a vigorous system of national inspection but by insisting on adequate reports to the central authority. She makes the payment of the portion of the compensation of this force which the nation itself pays dependent upon the force, in each locality, being kept up to this standard.[1]

We are not without some fear that we may be thought partial toward England. On the contrary, no reader could be more delighted than we should be if the comparison could be made more favorable to the United States. It has been a disagreeable duty to set forth facts humiliating to American pride, but these facts need to be more generally known. Professor Goodnow, of Columbia University, — a careful student of municipal affairs, — referring to the municipal system of England, says "her example should encourage us to follow in her footsteps; for nowhere else, it may be said, is municipal government, at the present time, more successfully administered, and nowhere else are the tasks it has taken upon itself to perform of greater magnitude."[2]

In dismissing the municipal reform policy of Great Britain, we may keep in mind these facts: (1) that one of its objects was to remove evils which had arisen under party government in her cities; (2) that the remedies she has applied have been in their nature non-partisan, and have constantly tended to eliminate party domination; (3) that the reformed system she has established has made it possible and safe to

[1] Shaw's *Mun. Gov. G. B.*, p. 67.
[2] *Mun. Home Rule*, p. 267.

more and more extend — and she has more and more extended — the sphere of Home Rule; (4) that in no way, apparently, has party or its methods been an efficient force in accomplishing the reform — the strength of its support having been the non-partisan public opinion of the people; (5) that nominations for city councillors and other officers are now made by certificates and not by party primaries, and that party tests are not applied in city affairs; (6) that in every city the central and paramount authority has been — and now is — the city council having a single chamber, some of whose members having been elected by the people, and some of them having been appointed by the council itself; (7) that these members having long terms of office — ranging from three to six years — are so classified that no single popular election is likely to insure to any party the control of the council; (8) that the council elects the mayors from among its own members; (9) that a mayor elected by popular vote, or having autocratic powers, has been unknown in Great Britain since the reform of her municipal system in 1835; (10) that practical results of such methods have been to establish the best municipal administration in the world, and to make it substantially independent of national party politics; (11) that the English people find their municipal system so satisfactory that they do not regard it as likely to be fundamentally changed, or now make any exertions for such a purpose.

CHAPTER XIII. — THE METHODS AND PRACTICAL RESULTS OF MUNICIPAL GOVERNMENT IN CONTINENTAL EUROPE

The tendency of government in its cities generally democratic or liberal. Their governments have valuable lessons for us. French municipal codes. Elections by general ticket. French city councils. They elect the mayor and his assistants. Functions of French councils and mayors. Character and capacity of French councils. (1) French city government compared with American. French police system. French schools. Pawnshops and savings banks. Government of Paris. Its council. Difference between French and English municipal systems. Good administration in Paris. It has able officers. Party politics largely excluded. Skilful persons who aid the city officers. Some illustrations of the results of the city government in Paris. (2) City government in Spain. Its city councils elect the mayors. (3) City governments in Italy. City councils elect mayors from their own body. The appointing power. Foremost citizens take part in city government. Some illustrations of the Italian city system. (4) City government in Austria. Rapid growth of Buda-Pesth. City council of Vienna. Its members elect the mayor. Executive committee elected by council, which has great powers. The municipal system of Hungary. Councils elect mayors. (5) City government in Belgium and Holland. The city councils are as in most European cities elected for terms of six years. The king (or his government) appoints mayor from the council. The council and not mayor has the appointing power. The cities of Belgium have more party politics than those of any European country — yet less than those of United States. Drastic laws concerning suffrage in Belgium. (6) The municipal system of Holland closely analogous to that of Belgium. (7) The city government of Hamburg. Its council. It elects a Senate which chooses the mayor and administrative Bureaus. (8) Cities of Germany. They are generally prosperous and their governments good. Berlin a characteristic city. Its council. It elects the mayor subject to Emperor's approval. It has members analogous to the Honorary Aldermen we have proposed. The city government is non-partisan, economical, and able. How private citizens aid the city administration. The government efficient, and why. Its educational system. Its sewage and sanitary systems. Its methods concerning the poor. Its financial condition. European city governments compared with American.

In the most enlightened countries of continental Europe, government in recent years has advanced toward liberty and common justice in no sphere, perhaps, so rapidly, as in that of municipal affairs. In some particulars it is quite appropriate for a democracy, and in others not. In the municipal administration of France and Germany, for example, we shall find methods enforced which are more largely in the spirit of

kindly care for the poor and humble than the methods which generally prevail in the United States;[1] while, at the same time, these nations maintain a control over some high city officers which we should regard as unwarranted. Nevertheless, in various particulars, the cities of continental Europe are allowed a larger power of self-government than American cities possess.

In Germany, a mayor can hardly gain his place without the approval of the state executive, and in France, mayors are in various ways subordinate to prefects, who are appointed by the national government. Yet it may be doubted whether, even in these countries, the power of municipal officers to promote true municipal interests is so much impaired by state interference, as the power of such officers to promote such interests in the United States is impaired by party intermeddling and domination. Party tests for subordinate officers are almost as completely eliminated in most of the enlightened cities of continental Europe as they are in English cities.

There is much that is useful to be learned from the governments of these continental cities, especially by reason of the different conditions under which, as independent nations with diverse races of people, they have reached common conclusions.

France has comprehended the vast advantages of a general municipal code applicable to all her cities and to all minor political divisions under the name of communes — which seem to include such minor jurisdictions as would be called towns and villages in the United States. France has more than thirty-six thousand of these communes. In recent years, the salutary effects of English municipal codes have attracted the attention of French statesmen, and they have apparently regarded them as being as desirable in a republic as in a monarchy. In 1884, France repealed numerous municipal laws and enacted a general municipal code applicable to her communes — its provisions being so framed that such of them as are appropriate for all the communes apply to all, while

[1] Commons's *Pro. Rep.*, pp. 203–208.

such as are only fit for regulating the smaller apply only to them. There seem to be provisions for several communes coöperating in the management of their affairs.[1] Thus unity and harmony — aside from Paris — were given to the whole municipal system of France; the need for special charters was avoided; and judicial decisions affecting the construction of municipal law became generally applicable to all the cities of France.

The code provided, as a general rule, that each commune should have a council composed of a single chamber whose members — varying in number in reference to the population of the commune — were made elective at large; that is, by general ticket for the term of four years, without classification of terms, at separate municipal elections. "The French statesmen," says Dr. Shaw, "have recognized the fact . . . that elections by general ticket secure a higher average degree of character and ability in municipal councils . . . than the plan of one-name districts."[2]

It is obvious that the safeguards — in connection with the elections, and with the terms of office — against party domination in French cities are by no means so adequate as they are in English cities — the members of French councils not being classified, and therefore leaving it possible for a party to choose all members of the body at a single election. But we shall soon see that civil service examinations for filling city offices — perhaps more rigorously applied in French than in English cities — have been very effective against such evils. It may be noted here that France, in her laws applicable to her political divisions most analogous to American counties, has provided for councils — single chambers — having large control for local self-government. Their members are chosen for terms which clearly

[1] Wilcox's *Study City Gov.*, p. 68. Paris, by reason of its peculiar needs and relations, has been excepted from French codes, as London had been excepted from the earlier English codes.

[2] *Municipal Government in Continental Europe*, p. 172. This volume of Dr. Shaw's is a worthy companion of his valuable work on English municipal government. In citing it the letters "Cont." will be used instead of "G. B." to distinguish it.

disclose a purpose of preventing both sudden changes of policy and mere party control, for they are elected for a term of six years, — the same as members of the English county councils, — and one-half of them retire every third year.[1]

2. The French municipal councils choose the mayor and his assistants or adjuncts from their own body. This is a departure from the English method mainly in the choice by the council of assistants for the mayor. The republican statesmen of France seem to comprehend — as well as the statesmen of England — the fact that to elect a mayor by popular vote is inevitably to impose upon a city both a party-elected mayor, and, in the main, party government, and consequently to perpetuate party contention for city control. Suffrage in France is nearly as extensive as it is in the United States.

We may say, generally, that the election of mayors by popular vote is as unknown in France — or indeed anywhere in Europe — as it is in England. The mayors in France preside in the councils and are — aside from Paris — the direct executive heads of the municipalities. The French council appoints standing committees for the supervision of departments and important subjects, of which committees the mayor is *ex officio* chairman — though one of his assistants, assigned by him, may be the active chairman. In the main, a French mayor, subject to the prefect, exercises the appointing power, though there are specific provisions on the subject limiting the mayor's authority.

It hardly need be said that a mayor elected by a council from its own members, — liable to be removed by central authority, required to have his appointments approved by the prefect of his department, and deprived of nearly all patronage by the civil service examinations — is not likely to attempt to play and cannot play the partisan, despotic part of a party-elected American mayor. As compared with the English system, the French system makes the mayor

[1] *Comparative Administrative Law*, Vol. I. p. 277. This work by Professor Goodnow of Columbia College is a valuable addition to our governmental literature.

more important and the council less important, but Dr. Shaw says that in both the council "is the central and important fact," and he thinks the tendency in France is toward the English system. Professor Goodnow says that "in France the municipal council regulates by its deliberations the affairs of the commune." [1]

In expressing a general view, Dr. Shaw says, "the municipal councils of France fairly reflect the prevailing standards of personal honesty and uprightness, that . . . the intelligence of the community is very well represented, . . . but that in the present decade the French councils have been less substantial and responsible bodies than those of the large English and German towns (cities), while far superior in these qualities to those of American cities of corresponding size." [2] Such results might have been anticipated from the failure of the French code to authorize Free Voting, to classify the members of their councils, or to provide for members elected by themselves, into their own body, which would have secured greater stability and a better representation of the minority.

3. It is not difficult to find practical illustrations of the superiority of administration in the cities of France, as compared with that of American cities. So much of the monarchical methods of France in regard to the police force remains that one would think it might be at least as readily used, as is the police force of American cities, by party managers for party purposes. That the French government, through its prefects, does sometimes make this force effective for party ends seems to be beyond question. But the admirable, non-partisan examinations for entering it, and for promotion in it, prevent its being dominated by party spirit, or servile to politicians — save in rare crises. Dr. Shaw tells us that no minister has for many years attempted "any seriously objectionable use of the Parisian police system for improper political purposes." The police system was, in 1854, modelled on that of London; and we may add that

[1] *Proceedings Lou. Conf.*, 1897, p. 72.
[2] *Mun. Gov. Cont.*, pp. 163–180.

the best features of the police system of New York were derived from the same source a few years later. "The police system of France, as it exists to-day, . . . is manned from top to bottom by officers who have entered the service upon examination for fitness and have been promoted for merit. . . . The honesty and faithfulness of these policemen are matters of common testimony. The discipline of the service is strict and the duties are arduous, while the pay is exceedingly moderate."[1]

4. There is much for which we have no space in the organization and government of the police force of Paris, as well as in that of London, which would richly reward the careful study of the friends of municipal reform in the United States. All the means by which an admirable police force has been secured in each of those cities are available for us. But when we remember that despite all the anxiety and shame lately caused by the demonstrated corruption and partisan tyranny in the police administration of New York City, there was very little study of the police systems of the best-governed cities of Europe, — nor has there been since, — we may well fear that the reform of American police methods will not be as prompt and easy as some sanguine people imagine.

5. Some matters connected with the public school system and public savings banks in French cities are worthy of notice. Throughout France primary instruction is obligatory and free. School books and various appliances needful in school are gratuitously supplied — and in parts of France meals and sometimes clothes — for poor children. "In all important towns, moreover, one finds schools of the fine arts and of artistic designing supported by the municipalities, . . . while the commercial schools . . . are found in every town of importance. . . . The laws for compulsory attendance of the schools are remarkably well enforced — the number of children growing up uninstructed being less than one per cent.

"There are public pawnshops . . . in more than forty

[1] *Mun. Gov. Cont.*, pp. 39, 40.

. . . cities and towns of France, . . . for the accommodation of those in pecuniary distress. Savings banks . . . are to be found in all important towns. . . ." In 1894 there were of municipal savings banks and their branches more than two thousand in all, in which deposits could be made. For every six men, women, and children in France Dr. Shaw tells us there is a municipal savings bank account, the average value of which exceeds a hundred dollars; and that, including postal savings banks altogether, there is a savings bank account for every four and a half of all the people in France.[1]

6. We have no space, nor is it needful for our purpose, to attempt any general exposition of the complicated government of Paris, yet certain parts of it should be noted. Paris, the only city in France without a mayor, is a yet more splendid illustration than the city of Washington of the fact that the theory, generally accepted in the United States, that there can be no prosperous, well-governed city without a dominating mayor, is quite untenable. Dr. Shaw presents Paris as the "typical modern city." Its successful government, managed in the main by a city council, has developed attractions which, to the immense pecuniary advantage of its inhabitants, have drawn to itself vast numbers of sojourners from many nations.

Yet it is not only without any mayor, but the chief executive authority is divided between two officers, — the prefect of the Seine and the prefect of the police, — both of whom are appointed by the national government, as are also the commissioners who govern Washington. One of these prefects is at the head of the ordinary business administration, and the other is at the head of police administration, with important and effective relations with the police courts. The alleged necessity of one-man power in a city is as completely disproved at Paris as it is at Washington, or was at Rome under her two consuls.

Paris has a city council with large discretionary power over finances and taxation, and it indirectly controls most of

[1] *Mun. Gov. Cont.*, pp. 122, 199–204.

the departments of administration and the "construction of public works." This council, a single chamber, consists of eighty members elected in subdivisions of the city for the term of three years.[1] It hardly need be said that these provisions supply far less effective safeguards against party interference and domination than are supplied by the English municipal system. Dr. Shaw thinks this Paris council superior to the councils of great American cities, and that it would be still better if elected on general ticket for the whole city.[2]

The most marked differences between the municipal system of England and that of France are these: (1) Under the French system the members of the council are not classified; (2) it does not, like the English system, provide for the elected members of the council appointing additional members into their own body; (3) it provides, as the English system does not, for the election by the council of several assistants of the mayor in the discharge of his duties; (4) the French system concedes to the mayor, whom in both countries the council elects, larger powers than the English mayor is allowed. We have seen that the methods of constituting municipal councils and governing cities in England had largely suppressed party domination and patronage-mongering before civil service examinations had been established in that country. But in France, the methods of civil service reform seem to have been the most efficient means

[1] This council, in the main a legislative body, seems to be very active — holding sessions from eighty to ninety times a year. Wilcox's *Study City Gov.*, p. 146.

[2] We cannot, therefore, be surprised by the fact that efforts have been recently made from time to time to improve the municipal system of Paris. It is only a few years since a committee of its council made a report upon the subject which proposed important changes. The new plan made the council consist of one hundred and nine members to be elected for three years, one-third to retire annually — as is the case in England — and for their election upon general ticket. The proposed council was to elect from its own membership a mayor and also eight adjuncts or assistants, which were to form an executive corps or committee — obviously a considerable approximation toward the municipal methods of England. The appointing power, under this plan, was to be in the mayor and his assistants. Dr. Shaw thinks this scheme indicates the tendency of European thought on the subject — a tendency toward the English municipal system. *Mun. Gov. Cont.*, pp. 15–19.

for such suppression. The strict examinations in France for gaining entrance and promotion in the municipal service have been the main source of its fidelity and non-partisan efficiency.[1]

Dr. Shaw has recently made a careful study of administrative methods and municipal officials in Paris and other French cities, and his conclusions are worth citing. After referring to occasional interference by national parties through prefects[2] and to some bureaucratic methods of royalty which yet survive, he says that "it remains true that the execution of the varied municipal business of the French metropolis is in the hands of a marvellously well-trained and faithful body of public servants. . . . The popular educational system of Paris . . . furnishes a constant stream of suitable applicants for places in the various municipal and civil services. All admissions are based upon appropriate and impartial examinations. Promotions are made upon approved principles within the ranks; . . . removals from the service are not made upon arbitrary grounds. *Political considerations have nothing to do with municipal employment.* . . . There is every incentive to fidelity. . . . France," he says, "might accept the sway of a military dictator," without breaking up the administrative force of Paris, "which includes policemen, firemen, school-teachers, street-cleaners, bookkeepers, civil engineers, architects, . . . who are altogether out of politics." It need not involve a single change in the personnel of the tens of thousands of men who make up the administrative organization of Paris, save the two prefects.[3]

Paris, he says, "has at its command a larger and more brilliant array of engineering and architectural talent than all the important cities of the United States can show"; and

[1] We have, therefore, in the suggestions submitted for an American city government, endeavored to profit by the experience of both France and England.

[2] "Nothing," he declares, "could be farther from the truth than to assume that the great power vested in the prefect means any looseness or corruption in the ordinary administration of the police system." *Mun. Gov. Cont.*, p. 40.

[3] *Mun. Gov. Cont.*, pp. 29–32. Here we may see what is meant by taking a city administration out of party politics and governing it by public opinion.

that many a small European town "is better supplied in this respect than many a large American city."[1]

Such are the methods of municipal administration in a republican city of Europe — no dominating party-elected mayor, no party tests for office, no patronage to be won by party majorities, no apparent sphere for great city bosses or little city politicians and ringsters.

7. The well-trained officers to whom we have referred are aided in Paris by a considerable number of skilled persons of high character and attainments whom the council selects, but who are not perhaps strictly officers, and who are not paid salaries. Yet they are semi-officials who add great moral strength, dignity, and intelligence to the city administration. They perform services, especially in connection with the sanitary, scientific, artistic, and educational affairs of the city, which are analogous to those which we have suggested as attainable through the selection of honorary members of American city councils. They are a connecting link between the men who represent the higher intelligence, culture, and activities of the city, with the men who administer its detailed business affairs — uniting both in harmonious and salutary coöperation.

8. We have space for only slight suggestions of the results which have naturally sprung from a government so ably officered and so free from partisan domination. Paris has probably the finest market system in the world, and the best managed for the advantage of the common people. Besides the vast central market of about twenty-two acres, the city maintains covered, retail, public markets in all parts of the city — nearly a hundred of them altogether. The concentration of slaughtering in municipal abattoirs — which began in New York in 1867 — was accomplished in Paris early in the century.

There is a system of savings banks for the public schools

[1] *Mun. Gov. Cont.*, pp. 54, 90. Yet during 1896 another architectural commission was added to the skilled administrative force of Paris. *Annal. Am. Acad. Pol. and Soc. Sci.*, November, 1896, p. 154. "It is not strange that dangerously high buildings are not allowed in European cities." *Mun. Gov. Cont.*, pp. 90, 281.

of Paris; the attendance upon the free instruction for children between six and fourteen years of age is compulsory; books and other materials are largely supplied at the public expense; and some of the poor children are provided a warm meal at the schools; there is kindergarten teaching for small children; manual training and the rudiments of design are a part of common school instruction; the city council votes money for the expenses of school vacation trips of the children into the country.

The city council also contributes to instruction in the sciences and industrial arts on a large scale. Under its management especial workingmen's libraries in aid of the industrial arts have been established, and, in connection with them, lecture courses are provided. The public schools are supplied with their own libraries, and certain classes of the books may be taken away by the pupils for reading at their homes. Besides these, additional public libraries are supported at the public expense for the use of the people. We cannot enter into details concerning the various methods through which the city of Paris encourages the high artistic and scientific instruction which has greatly helped to make it, perhaps, the most attractive city of the world, and to cause millions of foreign money to be annually expended within its borders.[1] In considering such facts, illustrating a superiority in so many directions, it is not easy to decide whether a non-partisan city government in charge of an able council and of administrators whom no party controls, is most remarkable for its economical advantages, its benevolent purpose, its educational wisdom, or its guarantee of public order, prosperity, and justice.

II

Spain is not a country to which we would naturally turn for valuable lessons in municipal government. Yet she has a municipal system which is worthy of some notice. In regard to the fundamental organization for municipal Home

[1] *Mun. Gov. Cont.*, pp. 90-127.

Rule, Spain has reached much the same conclusions as most of the enlightened nations of Europe. The chief municipal authority for local administration is vested in a city council whose members — varying in number from five to thirty-nine according to city population — are elected for four years on general ticket, one-half of them retiring every alternate year — an organization to some extent more favorable to non-partisan government than that of France. The council chooses one of its own members to be alcalde (mayor), who is its president and the chief executive officer of the jurisdiction. In the large Spanish cities the mayor has several assistants selected by the council — analogous to the assistants thus selected to aid the mayors in France. The minor courts of justice seem to be largely regulated by the Spanish city councils. It is obvious that under such a system mere partisan control of city affairs is made more difficult than it is in most American cities. No popular election of mayor causes such constant party contests as occur in American cities.

III

Italy has not had a very favorable experience for developing municipal wisdom, yet she can apparently teach American states some lessons they would do well to study. In 1889 the Italian Parliament enacted a municipal code for the government of cities and communes — its varied provisions being, in some of their appropriate parts, adapted to the whole range of municipalities from the largest to the smallest. Dr. Shaw declares this code to be "an excellent example of clear and scientific legislation . . . ," — and, therefore, we may add, an invaluable prerequisite for good municipal government, which few American states possess, and the value of which the people of most of them do not seem to appreciate. This code has superseded special charters, and has put municipal government, in cities of approximate population, on a common basis. For each of the jurisdictions regulated by the code there are provisions for a council, the number of the members of which vary through five grades, from fifteen for the

smallest to eighty for the largest. It would seem that this code has left little need for special charters.

The members of the Italian councils are chosen for a term of five years upon general ticket, and are so classified that one-fifth of their number is renewed annually — provisions which give much experience to the administration, and make a complete party capture of the government at a single election apparently impossible. In the larger jurisdictions, the electors can vote for only four-fifths of the members of the council to be elected at the same time — and thus apparently a limited though very inadequate minority represented is insured. The mayor is elected by the council itself from among its own membership for a term of three years.[1] The council not only elects the mayor from its own membership, but also a standing executive committee composed of from two to eight members, as may be appropriate for the city population — a committee closely analogous to the mayor's adjuncts or assistants in French cities. The members of this committee are chosen for two years, one-half of them retiring annually. The mayor presides both in the council and in the executive committees. The latter body has the appointing power and is responsible for its doings to the full council, to which its action must be reported for review.

The great municipal changes recently made in Rome have, perhaps, been too much influenced by national action to make them fair illustrations of the effects of the new municipal system, which, are however, shown in other cities — in Milan, Turin, and Genoa, for example. Taking Milan for illustration, Dr. Shaw says that it "has won the right to be enrolled with the well-administered cities of the world"; that its affairs are in the hands of its most enlightened citizens; that its population has increased thirty per cent in the ten years previous to 1894, while its death rate has been

[1] But in jurisdictions with a less population than ten thousand the king, by his prefects, nominates the mayor, — in supposed deference to the wishes of the councils, — perhaps a provident provision among a people so poorly educated as many of the Italians.

steadily diminishing. He says that "in all the vigorous activity which marks . . . its municipal government . . . the foremost citizens take the leading part," and that the "municipal government of Milan is said to have kept itself above so much as the suspicion of jobbery or corrupt methods."

It is interesting to note, at Milan, a similar fact to that which we found so significant in England,[1] — the fact that the people are often so satisfied with the nominees for city offices that they elect them year after year by mere nomination, without needing to take the trouble to go to the polls. In 1892, for example, of 44,594 registered voters in Milan, only 14,177 actually voted. Such results of government by public opinion, which really makes the nominations, are all the more remarkable when shown among two peoples so very unlike as the English and the Italians.

We have no space for further details, but we may add that the measures now (1897) being taken by the city of Naples for improving its sanitary condition and the houses of the people are among the largest ever entered upon by any city. Its complete execution — the estimated cost of which is said to be $100,000,000 — will require the property, in whole or in part, of more than 7000 proprietors to be taken; the area of the improvements includes 271 old streets, of which 144 are to be abolished entirely and 127 are to be retained and widened; about 90,000 people are to be unhoused, and 17,000 habitations and 62 churches are doomed to be taken.[2] These facts may well be pondered by those who think that European cities are stagnant, or that it requires a party government in American cities, led by a party-elected mayor, in order to do great things. This is certainly a courageous and wonderful work to be undertaken by a city of 450,000 inhabitants, even when its government is non-partisan and in the control of its ablest and worthiest citizens.

[1] See Ch. XII.

[2] Shaw's *Mun. Gov. Cont.*, pp. 252–266, 284.

IV

1. Austria and Hungary are, perhaps, not countries in which we should have anticipated striking examples of municipal growth, yet few cities, in recent years, have excelled Vienna and Buda-Pesth in their development. Dr. Shaw regards the changes in Vienna since 1860 as almost rivalling those of Chicago, and as being, on various accounts, "the world's most notable example of a splendidly appointed metropolis." He says that Buda-Pesth is now four or five times as populous as it was in the middle of the current century; that it has had the most rapid growth in recent years of any European capital, and that it has now the full magnificence of a splendid city.

Various provisions of the old aristocratic system of Austria still prevail in her cities. For example, citizens must be twenty-four years of age before they can vote in Vienna, and that only one in about twenty-five of the city population possess that privilege. Such provisions connected with such growth and prosperity show that universal suffrage and extreme democratic methods are at least not the sole elements of municipal greatness.

It is an interesting fact that in Vienna where the municipal voters are only about sixty thousand, in French cities where suffrage is almost as broad as in American cities, and in the cities of England where suffrage has limits near midway between these extremes, the fundamental organization and powers of the city authorities are substantially the same. The central authority in Vienna is a city council of 138 members. They are elected for a term of six years; and one-third of them retires every two years — provisions closely like those in English cities, and which render strict party government impossible.[1] The mayor (Burgomaster) is chosen by the council, subject to the approval of the Emperor, from its own members for a term of six years. He is the presiding officer of the body and the executive

[1] We need not notice some peculiar provisions for electing these members by certain classes of voters.

head of the city administration. There are two vice-Burgomasters elected for terms of three years. The council also selects the members of a small body, over which the mayor presides, in the nature of an executive committee. This committee carries on the details of the administration, selects the appointees to fill the offices, — which the council creates, — and reports all its doings to the council, all this being much according to the methods of the municipal government in Italy. The executive work is carried on under permanent expert officials.

The method of creating the city council brings into its membership men of varied learning and distinction, — even statesmen of national and international repute, — yet a majority of its members are business men. The council, whose members serve without pay, seems to have very large authority for Home Rule without the need of much special legislation. It "is in the full control of the general affairs of the city, including its finances and its plans and policies, . . . and it carries on its work through standing committees. . . ."[1]

2. The government of Hungary has but an imperfectly developed municipal system, yet her large cities have municipal councils which are the controlling force in her local affairs. The councils choose the mayors, assistants, and magistrates for terms of six years; these officials are members of the council; and, aided by executive committees, they carry on the work of administration.[2]

V

Though Belgium and Holland have not so important municipal lessons for us as some other countries supply, yet their experience deserves attention. Each appropriate local division in Belgium has its own elected council, the number

[1] Shaw's *Mun. Gov. Cont.*, pp. 413–417. It is an interesting fact that this aristocratic city system of Vienna provides for local control in different parts of a city, which seems to be more democratic than perhaps anything of the kind in American cities.

[2] Shaw's *Mun. Gov. Cont.*, pp. 410–417, 435–449.

of members of which vary from nine to thirty or more, in reference to population. They are elected on general ticket for terms of six years, and are so classified that one-half of them are chosen every third year — provisions which, like those of the other European countries, are a great obstacle in the way of mere party government. The mayor (Burgomaster) is appointed by the king (or in substance by the government of the day), from the members of the council. The mayor has not any fixed term, and he is the presiding officer of the council. Several assistants of the mayor are also appointed — their numbers having reference to population — from the members of the council for terms of six years. The mayor and these assistants form a standing executive board for supervising municipal work. This board seems to be charged with the local execution of the general laws, and in this particular is quite unique. The Belgian mayor, unlike the French mayor, does not exercise the appointing power — that power being in Belgium, as is the case in England, exercised by the council itself. The Belgian mayor — apparently in his relation as the appointee of the king — has authority over the police. As the king, in exercising his appointing power, does it through the government of the day, — which represents the national party majority, — it is plain that we have, in Belgium, a nearer approximation than exists in any other European country to the despotic, party elected American mayor; but as the Belgian mayor has not the appointing power and the members of the council have classified terms, he has by no means the ability of an American autocratic mayor to make himself a party despot.[1]

[1] Belgium enforces a very drastic requirement for the exercise of municipal suffrage. There are examinations for ascertaining whether the citizen has the educational qualification required for voting — apparently a very just and salutary provision. Since 1895 no one has been allowed to vote in municipal elections if under thirty years of age, or unless he has been a resident of the place for three years. Certain classes of voters above thirty-five years of age are allowed more than one vote, the additional votes being based on the facts of their being "family men," taxpayers to a certain amount, or real estate owners. Belgium has some regulations of voting by the illiterate classes which might perhaps be adopted with advantage in other countries. Shaw's *Mun. Gov. Cont.*, pp. 218–225.

2. In Holland, there is a council in all cities, and for towns of considerable size — the number of the members of which vary with the population. The official term of these members is six years, and they are so classified that one-third of them are renewed biennially. The reader must have noticed that these provisions, with small variations in details, are almost universal among the enlightened nations of Europe. There is a property or taxpaying qualification for suffrage in Holland. The mayor — appointed by the crown for the term of six years — is the presiding officer of the council. The council appoints certain assistants of the mayor, who, with him as their head, constitute a sort of executive committee having charge of the municipal departments, and exercise the power of appointment and removal in a way analogous to the practice under the French system. The mayor generally holds his office for a long time. As the representative of the king, he controls the police — as is the case in Belgium. This seems to be a limited survival of that royal authority which, in more despotic times, was general in the executive sphere — yet an authority hardly greater than our city-party system confers upon its autocratic mayors in its retrogression toward royal despotism.

VI

The governmental methods of the city of Hamburg are especially interesting as an example of a government which, in substance, combines the powers of an American state with those of a mere municipality.

Though Hamburg is a member of the imperial confederation of Germany, it is free to manage its local affairs. The city is primarily governed by a House of Burgesses — which may be fitly designated a council — of 160 members. Eighty members of the council are elected by the equal suffrages of the taxpaying citizens; and this suffrage approximates universality. Of the other eighty members, one-half are elected by the householders of Hamburg, and the remaining forty are chosen in a peculiar manner by a

special electorate made up of judges, of certain dignitaries of state, of members of guilds, and of corporate bodies — the intention seeming to be to secure a representation of the judicial and non-partisan wisdom, the administrative experience, and of the great business interests of the city. May we not feel that such a representation is a sort of precedent for Honorary Aldermen in American city councils?

It is worthy of notice that in this independent city there is much that is fundamental, in connection with its council, which confirms the results of all European experience. The members of the council, like those of nearly all European councils, are elected for a term of six years, and they are so classified that one-half of them are renewed every third year. Persons who are elected members of the council are required by law to serve in that capacity.

From this point the government of Hamburg begins to be more peculiar. The council elects for life eighteen members of another body, which seems to combine to some extent the functions of both a Senate and a Board of Administrative Control. We may call it a Senate, but we need not enter into particulars as to its powers. It is enough for our purpose to say that this Senate elects the mayor, whose official term is two years, from among its own members, and that he is the presiding officer of the body, which is generally composed of the foremost citizens.

The office of mayor of Hamburg is one of great dignity, and he holds a high place in the estimation of its people. There are several administrative bureaus, or boards, under the direction of the Senate, with a senator at the head of each.

Here is a city government — and we may, perhaps, say a state government also — which manages its own affairs successfully by methods that leave little opportunity for party rule, and were plainly intended to make such rule impossible. If we must think that too much is conceded to mere property interests in Hamburg, and that there is too much independence of popular forces in her Senate, we should not forget that she contended nobly and successfully

for municipal Home Rule, and for some republican principles, when wild Indians were roaming where New York now stands. A comparison of the senators of Hamburg with New York aldermen might cause statesmen to think that the younger city may yet learn something useful from the older, while rejecting all life tenures for municipal officers. If Hamburg has solved the municipal problem by methods which seem excessively conservative, they have saved her in the main from the scandals and corruptions which have discredited the excessively democratic and partisan methods which have prevailed in American cities. Much as we may object to some undemocratic features in the government of Hamburg, they do not seem to have been unfavorable to her prosperity. Previously about the size of Boston and Baltimore, Hamburg — in the fifteen or twenty years prior to 1890 — seems to have increased her population nearly twice as much as Boston, and fully twice as much as Baltimore.[1]

VII

1. Though Germany has no municipal code applicable to all her cities which can be compared with those of England, France, and Italy, yet she has excellent municipal laws which are broadly applied, and are so well enforced as to deserve our careful attention. Professor Commons says, "It is generally agreed that the government of . . . German cities is superior to that of American cities. Public officials are renowned for their honesty, efficiency, and the economy of their administration. . . . The municipal councils include the best and most intelligent citizens. . . ."[2] Dr. Shaw says German cities "have grappled with the new municipal problems . . . and have solved them far more promptly and completely than American cities have done." And as an illustration, he says "the maintenance of streets in general is so much better than anything in America that comparisons are humiliating, even . . . the Dresden streets being much superior to those

[1] Shaw's *Mun. Gov. Cont.*, pp. 293, 384–387.
[2] *Pro. Rep.*, p. 203.

of our one exceptional city, Washington. . . ."[1] We must not attribute this superiority to a fixed order and inactive life in these old cities. "Berlin, in the past twenty-five years, has added as many actual new residents as has Chicago — Berlin being about four times as large as it was in 1860." Its enterprise appears in the fact that it used asphalt on its streets more than twenty years ago.[2] "Since the war with France the whole municipal organization has undergone revision. . . . With admirable thoroughness, . . . the work of reform has been carried on in every department."[3]

No one, perhaps, of the German cities is more characteristic of all the others than Berlin; and as its government includes those provisions which are most worthy of our study we shall make them the chief subjects of comment. The work of improving the municipal system began in Prussia under a law of 1808, which seems to have been regarded as a great achievement of statesmanship ever since. Professor Gneist[4] tells us that the financial self-government of Berlin was placed in the charge of a council, elected by its citizens,[5] which controls its affairs, manages it external relations, draws up the ordinary budget for the year, and allows extraordinary expenses, thus exercising large ordinance-making and Home Rule powers, and avoiding the need of much special legislation. These powers are to a large extent separated from those of administration, which are in the hands of what Professor Gneist calls the Court of

[1] Colonel Waring of New York seems to have found street cleaning in Berlin up to his own high standards. See his *Report on Street Cleaning*, 1897, pp. 24–27.

[2] *Mun. Gov. Cont.*, pp. 293, 297, 335.

[3] Pollard's *Study Mun. Gov.*, p. 6.

[4] We are much indebted to an authoritative article by this eminent statesman, who has given much study to the city government of Berlin, published in the *English Contemporary Review*, December, 1884.

[5] There is a property qualification for voting in Berlin which excludes a considerable number of the citizens from the polls. The whole body of the taxpaying electors — numbering in 1884, according to Professor Gneist, 185,195 — was divided into three classes, each class paying one-third of the taxes and being entitled to elect one-third of the members of the City Council; and this method, still continuing in Berlin, is analogous to that which is said to prevail in some other German cities.

Mayor and Aldermen, but which for convenience we may call the Administrative Board.[1]

The council elects the mayor of Berlin, subject to the approval of the king, for a term of twelve years. The mayor is the official head both of the council and of the Administrative Board. The council also elects thirty-two aldermen, twelve of whom, chosen for the term of the mayor, are paid a salary, and the rest of whom, chosen for a term of six years, serve without pay.[2] Dr. Shaw says the councillors of Berlin — and apparently of Prussian cities generally — are elected for six years, and that one-third of the seats are vacated and refilled every two years. Professor Gneist tells us that the paid members of the council include men of great experience and technical skill in the various branches of municipal administration, and that the positions of unpaid members — positions somewhat analogous to those we have proposed for Honorary Aldermen — are considered highly honorable, are sought by intelligent and distinguished citizens, and that their presence in the board "imparts to the whole body of aldermen that spirit of manly independence which has proved most beneficial in stormy times."

Dr. Shaw confirms the view of Professor Gneist as to the salutary influence of these members.[3] The effectiveness of these non-partisan members of the city councils deserves our attention. "Municipal councillors," says Dr. Shaw, "are as a rule very excellent citizens; it is considered a high honor to be elected to the council. Membership is a title of dignity that merchants, professional men, and scholars are usually eager to hold. . . . The sentiment toward these positions is much

[1] Some writers speak of the members of this Board of Administration as being a board of magistrates said to be thirty in number, — fifteen only of whom are paid salaries and give their whole time to the city. We need not enter into the peculiar relations between the council, the mayor, and this board. Pollard's *Mun. Gov.* (Berlin), p. 8. The council, says Dr. Shaw, appoints associates of the mayor in the administration, who are known as "City Magistrates," and have the charge of many details of city government. *Atlantic Monthly*, June, 1897, p. 736.

[2] Dr. Shaw, writing subsequently to Professor Gneist, speaks of this board or "magistracy" as composed of thirty-four members. *Mun. Gov. Cont.*, p. 317.

[3] *Mun. Gov. Cont.*, pp. 311, 317, 318.

the same in Germany as in Great Britain. . . . The reëlection of good councillors term after term is common in both countries. . . . The presence of men eminent . . . for expert knowledge is another of the characteristics of the German councils. . . . The councils form themselves into standing committees for working purposes. . . . There are in Berlin . . . about seventy-five 'citizen deputies' who are selected by the council for their fitness to serve as associates on committees charged with the oversight of various municipal interests. . . ."[1] This matured method of non-official coöperation in municipal administration — of which we have seen a small beginning in Boston — has been highly salutary in its effects in Berlin and throughout German city government.

No American can fail to be impressed, if he is not humiliated, by the broad contrast between the membership of German and American city councils.[2] If this difference be not mainly due to party rule in American cities, and its exclusion from German cities, to what is it due? Are Americans inferior to Germans in capacity and patriotism?

Professor Gneist tells us that governments thus constituted have been able to resist party attacks, and to manage the affairs of German cities in their own interests. We cannot fail to recall the steady persistence in laws for the election by English councils of members into their own body, and we may perhaps see, in the value of these Berlin aldermen similarly elected, the advantages likely to spring from such Appointed and Honorary Aldermen in American councils as we have suggested.[3]

It is a striking example of the sound, non-partisan, theories and interests which prevail in German cities that, when a few years ago a new mayor was needed for Berlin, a man who had distinguished himself as mayor in a smaller city was, by reason of his fitness, selected for the office. He came to

[1] *Mun. Gov. Cont.*, pp. 311–313.

[2] "The tendency toward the distrust of American city councils has become so strong that in some cities the name 'Alderman' is an opprobrious title." Wilcox, *Study City Gov.*, p. 146.

[3] See Ch. X.

Berlin as its mayor; and, as illustrating the dignity of the mayoralty office, we may add that the new mayor had been President of the National Diet of Germany. It requires a sanguine faith to imagine the imitation of such an example on this side of the Atlantic.[1]

2. There is almost no opportunity for party patronage under the governments of German cities, for non-partisan tests for office are everywhere enforced; public opinion requires a tenure of good behavior and efficiency; and removals of subordinates for party reasons are nowhere allowed. The council has a standing committee in regard to appointments and removals, which, as regulated under the German system, are not very different practically from the methods under the English system.

3. At first, the German system seems to be excessively official — to separate the people too widely from the government. But, in practice, such is hardly the fact. The people of Berlin, for example, take a much larger and more active part than the people of American cities in the public administration of city affairs, a result made possible and natural by the exclusion of party control. The members of the council not only take part in administrative details somewhat after the manner of the members of the English city councils, but they and the members of the Administrative Board appoint for such purposes a body of "distinguished citizens," whom Professor Gneist calls "select citizens," to take part with the members of the council in city administration. He says these "select citizens" often show themselves the most active and influential members of committees for city service. It is regarded as an honor to be designated as a member of one of these committees, and it is held to be a sacred duty of citizenship to serve on them. Dr. Shaw says of Berlin that "there are between two and three thousand citizens who serve the municipality in conjunction with regularly salaried officials." It is almost

[1] Mr. Conkling tells us how much he was impressed with the difference between the dignified mayor of Berlin whom he met, and the politician whom he had left as mayor of New York City. *City Gov.*, p. 28.

unimaginable in a party-governed American city that there should be so large and patriotic a coöperation.

4. In Berlin — as in London — we have results in marked contrast with those presented in American cities where autocratic powers are given to party-elected mayors. Leading American citizens make party relations an excuse for doing very little for good city government. Professor Gneist says that in Berlin the few political wire-pullers chosen to represent a party in a short time either assimilate themselves to the spirit of self-sacrifice or "disappear from the assembly, . . . and that the animosities of party get gradually blurred and finally blotted out altogether, in the common toil of daily work for the interests of the community" — significant words which those may well ponder who doubt the power of coöperation according to non-partisan city methods to develop a spirit which will treat city interests as paramount to party interests. It is this feeling developed in a non-partisan city council which helps to make it a fit body to elect aldermen into its own membership and to choose mayors. Professor Gneist declares that the administration of Berlin "is a practical, economical, and honest application of the public means." "Municipal financiering, in Germany," says Dr. Shaw, "is a high art. It unites thrift and minute economy with broad liberality. . . . The German taxpayer . . . sees everywhere about him the beneficent results of public expenditures carefully and wisely made."[1]

5. Another result of this non-partisan system in Berlin deserves the especial attention of the rich residents of American cities. For Professor Gneist tells us that the wealthy men of Berlin not only pay a higher rate of taxes than others but "that their personal activity for the benefit of the community exceeds that of the small taxpayers; . . . the higher contributions of taxes correspond . . . to the higher share of personal services in the administration. . . ." The neglect of the rich men in the United States to take the most active part in the government of cities is as notorious as it is discreditable. Is the explanation to be found in the

[1] *Mun. Gov. Cont.*, pp. 330, 376.

assumption that the rich men are less patriotic in republics than they are in monarchies? Or shall we seek it in the fact that despotic and corrupt party rule in American cities alarms and repels such men — often causing them to purchase their safety by bribing party leaders, and to slink from their duties into degrading inaction?

6. It is interesting to turn from these views of a European statesman to the conclusions reached by a competent American investigator. Dr. Shaw says, "It is not strange that the American observer should at first be most impressed by the splendid efficacy of German city governments in the prosecution of public works and enterprises. This is largely due, of course, to the superb and continuous organization of the executive administration. . . . The city council, representing the people's will, is renewed by instalments . . . and nothing like an abrupt or capricious change of policy is ever probable. Consequently it is possible to make long plans, to proceed without haste, to distribute burthens through periods of years, to consult minute economies, and to make a progress . . . which has more to show for every half-decade than could be possible under our spasmodic American methods. . . . On this plan the magnificent public works of Berlin have proceeded." He says that between 1870 and 1890 "$100,000 accomplished more for the making of permanent good streets in Berlin than ten times this sum accomplished in New York in the same years," and that despite all the street improvements since made in the latter city, the comparison of its streets with those of Berlin "is only a little less painful." . . . "Nothing accounts for this difference except the superiority of sound business methods in Germany over wasteful, political methods in America. Throughout all Germany the public works departments . . . are busy carrying out the mandates of their municipalities . . . " and not, we may add, in manipulating elections, in obeying bosses, or in carrying out the orders of state-party majorities expressed in innumerable, crude, special laws.[1]

[1] *Mun. Gov. Cont.*, pp. 331–337.

VIII

1. If we turn from material constructions to education, Berlin and most German cities can teach us important lessons. Berlin maintains not only public markets, but trade schools where mechanics and artisans are instructed.[1] "They have," says Dr. Shaw, "made elementary education universal and compulsory. They have introduced much manual training and physical culture into their school courses, and are many years in advance of our American cities in adopting the quality of instruction to the practical ends that common school education ought to serve." . . . "In addition they have amply provided for the higher education. . . . German cities provide trade schools." In Berlin there are thousands of "reputable citizens who are responsibly and intimately connected with the city's educational system. . . . I am sure," he says, "that so far as elementary education is concerned our American cities have more to learn from the methods and results attained by German cities than we have to teach to them. Our progress must be along their paths."[2] Why should we be surprised at these widely varied superiorities in German cities when we consider their stable, non-partisan, business methods, the able and experienced men whom their city system places at the head of city affairs, and compare them with the management of American cities whose affairs are constantly involved in the fluctuations and corruptions of party warfare, — every victory in which may give a city a new set of inexperienced, partisan leaders who constantly seek to make city administration useful to themselves and their party?

2. We have little space for evidence, more decisive than mere opinions, as to the relative merits of the city government of Berlin, New York, Chicago, and Philadelphia. Berlin is about four times as large as it was in 1860, being now (1896) apparently more populous than any one of those cities. It has lately constructed a marvellous

[1] Pollard's *Study Mun. Gov.* (Berlin), pp. 119, 131.
[2] *Mun. Gov. Cont.*, pp. 331–377.

and beneficent system for the disposal of its sewage, — having abandoned for this purpose the river that runs through the city, — and constructed what Dr. Shaw says is the most perfect drainage system in the world, through which sewage is distributed over more than thirty-seven square miles of municipal farms which the city owns — with admirable sanitary results, and a good prospect that the whole investment will be profitable even in a mere pecuniary sense. Berlin and about two-thirds of the large German cities supply their own gas, with pecuniary gain to the consumers.

Berlin, like New York City, has a vast tenement house population; but in the former the process of depopulating the congested districts has already begun, and comprehensive plans on the subject, based on ample investigations, are said to be ready for execution.

Berlin has erected, on a large scale, municipal cattle markets which are under its control — a manifest protection both against unwholesome food and extortionate prices. The city has also provided municipal lodging-houses and workhouses in the execution of a friendly policy toward the destitute and the unfortunate, and several German cities have even provided a system of insurance against sickness. In a similar spirit Dr. Shaw speaks of the eminent success of the German cities "in bringing thousands upon thousands of the best citizens into active service in connection with the administration of poor relief. . . ."

Berlin and, we believe, other large German cities have established savings banks, administered by public authority, in aid of the care and safety of the earnings of the humble classes — the system of Berlin providing seventy-five or more receiving offices which are used by more than four hundred thousand city depositors. For the same purposes German cities seem to have quite generally provided municipal pawnshops where the poor may seek relief in times of distress.[1]

[1] Referring to such beneficent provisions, quite beyond the scope and obviously incompatible with the conditions of city-party government in the United States, Dr. Shaw says, "One can, with very little imagination, read whole chapters descriptive of good service rendered to the poor in times of emergency, and of

Mr. Pollard tells us that while Berlin has poverty it has no slums; that street cleaning and the removal of refuse is mainly done at night, that the city is better lighted than any in Europe — save Paris — gas being used as an aid in preventing crime, and that separate lavatories for males and females with attendants in charge are established at suitable places in the thoroughfares in aid of cleanliness and comfort.[1]

3. This larger sphere of municipal Home Rule in German cities — as compared with that of American cities — does not appear to have resulted in disastrous investments. Dr. Shaw tells us that the financial position of German cities is absolutely unassailable. Whatever he may think of some details of German methods, the great advantages of eliminating party divisions from city administration, and of bringing able and worthy men into the control of city affairs, has been demonstrated. The facts we have presented seem to make it clear: (1) that local government in the continental cities of Europe is accompanied by a liberal and sagacious treatment of the poor and the humble which is worthy of our imitation; (2) that the sphere and authority for Home Rule in these cities is much broader than in American cities; (3) that the men who hold municipal offices in continental cities are as a rule much superior to the men who generally hold such offices in the United States; (4) that the business policy of those cities exhibits more statesmanship and business foresight than prevails in American cities; (5) that the establishment of non-partisan councils and the selection of mayors by them has facilitated the suppression of party rule, and the bringing of citizens of high character and ability into the municipal service; (6) that the coöperation on a large scale between municipal officers and worthy and patriotic citizens in private life, in aid of good administration, is a remarkable example of the good effects of the

public protection against the class of sharks who, in our American cities, prey almost unrestrictedly upon the distress of the tenement house population." *Mun. Gov. Cont.*, pp. 331–375.

[1] Pollard's *Mun. Gov.* (Berlin), pp. 43, 44, 52.

non-partisan city system — and a coöperation practically impossible under the city-party system.

4. At the end of the last chapter we found that these important facts had been established: (1) that the reform in the English municipal system had not been made by any party, but was an achievement of public opinion, and mainly for the suppression of abuses which city-party domination had in the main caused; (2) that the city council was the centre and the most efficient part of the reformed city government of Great Britain; (3) that the council, in every city, elects the mayor and holds him to a salutary responsibility; (4) that a mayor elected by popular vote has been unknown in the municipal experience of Great Britain; (5) that in the progress of municipal improvement there, the power of the city council has constantly increased, and that of party and patronage has constantly diminished; (6) that mayors and councils have coöperated harmoniously and vigorously for good city government, and that any considerable change in the reform system is regarded as both undesirable and improbable.

5. And now, after we have considered the governments of the most enlightened cities of continental Europe, we may affirm, as to them, most of these statements. It is worthy of notice that no matter how different the people to which these cities belong, how diverse the forms of their national government, or how peculiar their developments have been, all of them have reached in the main the same conclusions on these points: (1) that a city council elected by the people is the most essential and important part of a good city government; (2) that this council should be a single body; (3) that the mayor should be chosen by the council, and generally from among its own members, rather than by popular vote; (4) that the terms of the members of the council should be so classified that only a portion of them — generally one-third — will be elected biennially.[1]

In no European city, under modern municipal systems

[1] To this fourth conclusion, there is an exception in France, as we have explained, which apparently is not likely to be of long continuance.

has the mayor been elected by the vote of the people or party majority — and very rarely otherwise chosen than by the city council. It is only the party-oppressed cities of the United States which are seeking relief — as the degenerate cities of mediæval Italy sought it — by the establishment of despotic power in a mayor, which the monarchies have all discarded. Every European nation free enough to develop a good municipal system has regarded the establishment of a non-partisan city council, the election of a mayor by this body, and the suppression of party rule in cities as the three paramount conditions of good city government — and they have in the main secured it.

On the other hand, the peculiar municipal distinctions of the United States are these: (1) the failure to establish such councils; (2) the development of party rule and the spoils system in cities; (3) the enforcement of party tests for city offices; (4) the prostitution of city administration for party ends; (5) the election of mayors by city-party majorities; and (6) a failure to secure good or even tolerable city government.

CHAPTER XIV. — CONCERNING THE ELECTION OF MAYORS AND THEIR POWERS AND FUNCTIONS

Various methods of electing mayors. European and American compared. Early American mayors appointed. Growth of the city-party system for electing them. English suppression of the party system. Origin of American commissions. Why present American councils incompetent to choose mayors. The mayor as the speaker of the council. Why the new councils we propose will be competent. European experience on this point. A city mainly a business corporation. Directors are the councils of business corporations. They choose their chief executive. Choosing of the mayor should be a case of promotion. Competency of council for selecting mayor. Need of a vice-mayor. His duties. Manner in which councils should choose the mayors. Advantages of having council choose them. Council a continuous body. True relations between mayors and councils. Why mayor should be allowed the veto power. Special duties of mayors. Division of appointing and removing power between mayor and council. Foreign experience on the subject. The national constitution as a precedent for cities. Three classes of municipal servants desirable. The Major Service, the Minor Service, and the Labor Service defined and considered. As to appointments and removals in each. Better protection needed for city laborers and minor officers. Certain fundamental principles involved. No removals at pleasure to be allowed. Reasons for all removals should be stated.

Why mayor's appointments should require confirmation. Precautions against abuses in connection with appointments and removals. Mayor's power of removal considered. Cause of removal to be stated. Right of explanation and defence by those sought to be removed defined. Limited right of appeal to council from mayor's order of removal. Right to remove should be same during all parts of mayor's term. Notice of intention to remove. Concerning appeals from removals in the Major City Service. Removals in the Minor City Service and appeals therefrom. Relation of mayor to vice-mayor and assistant mayors. The objection mere politicians and partisans are sure to make. Concerning the best method of removing mayors.

1. ACCORDING to generally accepted theories there are but two methods of electing mayors, — one to have them elected by the people, the other to have them elected by the city council; and to these we shall address ourselves.[1]

[1] It would be possible to provide for their election by the people subject to the condition that if no candidate shall have a majority of the votes cast at the first ballot, the council should make a choice from among the three candidates having the most votes; or to provide that the people should choose the mayor from among the members of the council who have served in this body for the two or three years immediately previous to the election. Each method would have some advantages.

We have considered much experience according to both these methods, and have found city governments so much superior in cities where mayors are selected by the council as to be quite decisive in its favor if no collateral considerations were involved. We are aware of no well-informed American who does not admit the great superiority of municipal government in European cities where mayors are chosen by the city councils.

If the results of experience in European cities presented in the last two chapters had been attained in an equal number of American cities whose mayors had been chosen by their councils, the reader would probably regard the question as to the better method of electing mayors as already settled.

2. While all sensible and candid voters will finally decide this question, quite aside from national bias, this element has doubtless strength enough with many people to require some notice here. If the European nations had conferred autocratic powers upon their mayors, — giving them authority kingly in its nature, — nothing would be more natural than that republicans should attribute such a policy to royal and aristocratic sympathies and precedents. But the very reverse is the fact: the autocratic, semi-royal mayors are all on this side of the Atlantic; the truly republican mayors, and the truly representative city councils, — with ample powers for Home Rule and for electing mayors, — are all on the other side. Strong and enlightened indeed must have been the public opinion which has compelled kingdoms and empires to discard much of the fundamental theory upon which their national governments are based by placing the choice of mayors in the hands of city councils elected by the people. We have seen that, in recent years, the elevation of municipal administration in Europe has tended to make her city governments republican and democratic in spirit,[1] while, in the United States, party supremacy — degrading municipal affairs — has tended to make her city rulers both partisan and despotic. To increase party power, we have been giving kingly authority to mayors whom the parties and not the

[1] See Chs. XII. and XIII.

people elect; to improve city government in the common interest of the people, those nations have denied mayors such powers and have given them to councils whom the people and not the parties elect.

3. A clear illustration, which England can supply, of the cause of these anomalies will aid the solution of the main questions before us. We have seen that before 1835 English cities were despotically ruled by her great parties — in which royalty was a mighty force — and that to the service of these parties city interests were habitually prostituted.[1] We have also seen that the reforms then made provided for non-partisan city councils of a nature that rendered party rule in cities practically impossible. Their councils were to elect the mayors — and to elect them from among their own members — a provision which would obviously greatly increase both the non-partisan efficiency of the mayor and the prestige and power of the council. No party under such provision could, by carrying a single popular election of a mayor, get control of the city administration, or capture patronage and spoils. Non-partisan city government — government by public opinion — was thus practically established in England, and it has now been enforced for more than sixty years. We have seen how it has been since strengthened by Free Nominations, Free Voting, and Civil Service Reform.[2]

4. In the United States there has been no similar experience.

The first city governments in the United States were not merely based on English precedents — they were under English charters.[3] Many persons have a theory — perhaps quite generally accepted without reflection — that there was a definite and original American method of city government, a creation of our early statesmen. This view is unwarranted. When these statesmen did their original and noble work of creating constitutions for the nation and the state, the municipal problems had not, as we have shown, arisen — the importance of mayoralty elections in great cities was unim-

[1] See p. 49; *Mun. Home Rule*, pp. 8, 242-245. [2] See Chs. XII. and XIII.
[3] *Mun. Home Rule*, p. 2.

aginable.[1] Our largest municipalities were little more than large villages — the three largest cities having a population of less than 100,000.[2] The very limited harmony that exists in our municipal methods is more the result of overpowering partisan forces than of conclusions drawn from a study of municipal principles.

5. The municipal precedents we have from the times nearest to our great, original statesmen suggest the appointment of mayors by councils, rather than their election by the people. The first mayors of Philadelphia were appointed — sometimes by the city council. The people of Philadelphia were first authorized to elect their mayors in 1839. Until 1822, the mayors of New York City were appointed by the governor and the state council. Later they were chosen by the aldermen. The New York constitution of 1821 provided for the choice of mayors by city councils, and the mayor of New York City was not elected by its voters until 1834. In Boston, the mayor was made elective by the people in 1822.[3]

When American cities began to be a considerable political force, their control was naturally sought by political parties. As parties became more highly organized and powerful, they more and more enforced party tests for city offices, and used their city domination to aid state and national elections. This was the case in New York City as early as 1807, but serious municipal corruption did not begin until after mayors had become elective by popular vote.[4] The spoils system had, before 1835, become well developed in several of the leading states. It was in 1833 that Senator Marcy of New York made his celebrated declaration in the national Senate that "to the victors belong the spoils." At this time, party rule and fierce partisan contests over city affairs were perhaps about equally the curse both of American and English cities. This was two years before England adopted her great non-partisan,

[1] See Introductory Chapter. [2] See p. 6.

[3] Conkling's *City Gov.*, pp. 28, 29; N. Y. Const., 1821, Art. 4; Goodnow's *Comp. Am. Law, Mun. Home Rule*, pp. 2-5; *Mun. Prob.*, p. 2.

[4] 1 Hammond's *Pol. History of New York*, pp. 236, 238.

municipal reform law of 1835, which overturned party rule in her cities. The main difference in the two countries, so far as municipalities were concerned, was that while city governments were much in the same way dominated in both by national parties, there was in England a non-partisan, public opinion which demanded, and soon established, a non-partisan, municipal system, while there was a much less enlightened public opinion on the subject in the United States — a fact which Professor Goodnow recognizes.

From 1835, the municipal ways of the two countries began to diverge from each other, the one under the guidance of public opinion — which the English reform law of that year intrenched — and the other under the control of party opinion, which steadily tended to become despotic in American municipalities.[1] We have referred to various attempts to restrain this tendency,[2] and are now ready to deal with it directly on the basis of principle, so far as the mayor is concerned.

6. As England was resolved to suppress party despotism in her cities, she made her mayors elective by her city councils rather than by popular vote. For she saw that a popular election of the mayor would inevitably be his election by a party majority, and would perpetuate city-party government — facts which we have considered on the basis both of facts and principle. This non-partisan policy of England has naturally led to a large appointing and removing power in the council, and the requirement that the mayor himself shall be chosen by the council from among its own members.

7. It should be noticed here that the American system of municipal commissions had its origin in a wish to check the power of autocratic mayors elected by popular vote — the autocratic mayoralty system. In 1857, when, we believe, the first police commission was created, the Democratic mayor, Wood, of New York City, was such a mayor, and he had control of its police force. The most non-partisan and en-

[1] *Mun. Home Rule*, p. 8.

[2] Among them, Civil Service Reform, Ballot Reform, Free Nominations, Free Voting, and Minority Representation.

lightened sentiment wished to limit his power for the same reason that it now opposes the autocratic mayoralty system. The partisan Republicans wished to do the same thing, but for very different reasons. They desired for themselves the police patronage of the mayor. From this commission, the system of bi-partisan commissions seems to have been developed. The increasing power of an enlightened public opinion soon compelled the representation of both parties upon the commissions. The evils of bi-partisan commissions — great as they are — are probably much less than would arise under commissions composed of active adherents of a single party.

Parties are not utterly hostile to bi-partisan commissions, for under them, they can grasp and share all the patronage and spoils. Yet Tammany and all bosses and unscrupulous politicians — when they are themselves in majority — greatly prefer autocratic mayors to bi-partisan commissions — for the simple reason that they prefer the whole patronage and spoils to half of them.

8. Tammany and the whole horde of politicians and spoilsmen were therefore delighted to welcome the recent theory of autocratic mayors, — a new birth from municipal despair. It was something like a reversion to party despotism under Mayor Wood, and was admirably adapted to intrench their system of municipal government, and make party rule permanent. It was only natural that they should idealize the virtues of an autocratic mayoralty, and unite in augmenting its powers — under the new charter for the Greater New York. But nothing in our municipal history is more remarkable than the fact that the zealots for this recent theory have succeeded in throwing such a glamour over the subject that many non-partisans and independent voters have been deluded and misled until they have come to regard autocratic mayors as effective agencies for municipal reform.

From this review of the facts, it is clear that autocratic mayors elected by a popular party vote are not an original or salutary outgrowth of republican principles, but are an illegitimate result of party usurpation and despotism which

strongly tends to degrade and perpetuate party government in cities.

II

1. It should be said, without hesitation, that such city councils as American cities have recently had, bodies in which little more than parties and factions have been represented, would not be fit bodies for choosing mayors. But the proposed new councils are very different bodies. In them all the great interests and sentiments of importance, as well as all parties, may be fairly represented. Their members are to have long, classified terms of office. A large majority of them, when called upon to elect a mayor, will have served a long time in the council — some for nearly six years, some for nearly four years, others for more than two years. It would, therefore, be a body of great experience, apparently well qualified for such an election. The great question is this: Would it not be better to have the mayor himself elected by this body rather than by the majority of a party?

The answer to be given to this question will, apparently, depend largely on the answer the reader would give this further question: Does he wish to perpetuate party government in cities, or does he wish to suppress it? It is hardly possible that a council thus constituted could agree on the choice of a mere party zealot for mayor, or that it should fail to choose one who, like itself, could be representative of public opinion, especially as much more than a mere majority of votes is to be required for his election. On the score of capacity to make a wise selection for mayor, it can hardly be denied that those who have served several years together in the council are most competent to make a choice from among their fellow-members.

The mayor is to be the presiding officer, the speaker, of the council. In the latter capacity, he will have large authority in regard to its proceedings and committees. Now, it is a conspicuous and suggestive fact, based on vast experience, that legislative bodies generally, indeed almost universally, select the most able and honorable among their members for

their presiding officers. Their pride and self-respect, not less than their duty, prompt this.[1]

2. It is worthy of notice that it has been within the period since mayors have been elected by the people that the greater municipal abuses have been developed in the United States, while in the cities of England, and in European cities generally, within the same period — while mayors have been elected by city councils — the greatest municipal abuses have been suppressed.[2]

3. In favoring the election of mayors by the councils, we are not obliged to stand on theory or the experience of American cities alone. The uniform experience for more than sixty years, in the more than three hundred cities of England, — the nation of our race whose government is most similar to our own, — proves, not only that this method of election is generally salutary, but that there are neither practical difficulties nor evil results from its enforcement. This experience is confirmed by that of all the enlightened cities of continental Europe.[3]

[1] There is nothing in the election of an executive officer by a legislative body which is open to either a practical or a constitutional objection. Two presidents of the United States have been elected by Congress. If it be said that of late the choice of United States senators has in many cases been unsatisfactory, it can be easily shown that the abuses developed have had their origin in the partisan methods which control the election of members of the legislature, and that the remedy is to be found not in the election of senators by the people, but in the suppression of the spoils system, and in the Free Nominations and Free Voting which will secure a just representation of the people in the legislatures and not of parties merely.

[2] It may be said, in the way of objection on the basis of principle, that, if the councils should elect mayors, legislatures should elect governors, and Congress should elect presidents. There is a superficial plausibility in this statement, but its lack of force as an argument is easily shown. (1) City government deals mainly with business and administration, Congress and legislatures mainly with political principles and party issues; (2) the latter bodies are fit spheres for party action, while the cities are not; (3) the difference between the two spheres of action is so great as to require that city councils should be single chambers, while Congress and legislatures should be bi-cameral bodies. Besides, the supporters of autocratic mayors and perfunctory councils can hardly urge such arguments with consistency, for American constitutions allow no autocratic presidents or governors, no appointments at their mere pleasure, but requires all important nominations to be confirmed by the senates, which are the state and national councils.

[3] See Chs. XII. and XIII.

It will perhaps be conceded by most men, outside the circles of mere politicians and partisans, that if we had such councils as those well-governed cities possess, it would be better that they should elect the mayors. This admission practically concedes the whole question of principle involved, and increases the tremendous importance of the proper construction of these bodies to which we have given so much attention.

6. It will aid a sound view of the question before us if we keep in mind the fact that a city is not so much a political body as a business corporation, by reason of which it is duly classed in constitutions and laws as a "municipal corporation." While we must regard it as having considerable political and governing powers, we must not forget its essential nature and paramount functions as a corporation. It is in the very nature of corporations, in which all that property owners in this country have a paramount interest, whether real estate or investments, and that this body should select the chief executive, whether he be designated a president, a managing director, or a mayor. We have seen that corruption, inefficiency, and failures of a serious kind began in American cities after the corporate and business method of choosing mayors by councils had been abolished and the political and partisan method of electing them by popular vote, in parties, had been substituted. An essential step toward legitimate municipal government seems to be a return to the true corporate method of electing mayors.

All well-managed corporations avail themselves of the valuable experience developed in their own official service, by filling their high official places by promoting the most meritorious officers from the places below.[1] This practice prevails as much where a presidency as where a lower place is

[1] A mere business corporation may sometimes with advantage go outside its own subordinates for a high officer, and so might a municipal corporation but for the danger of vicious party influence. We have seen how the English and German laws now allow this, though in practice it is uncommon where party influence was dangerously strong. See Chs. XII and XIII.

to be filled. The filling of a mayoralty is as fit a case for such a promotion as the filling of a presidency of a bank or of a trust company; and one is as properly the act of a city council as the other is of a board of trustees or directors. But for the perverted control of our municipal corporations for party ends — rather than for business ends — and the partisan blindness of American politicians, we, like all the other enlightened people, would so regard the matter.

5. The more we consider the constitution, powers, and functions of the council, the clearer its capacity and fitness for choosing the mayor appear. It is to be composed of the best citizens that can be placed in its membership by methods of election the most favorable to the choice of able and worthy men who will fairly represent all city interests. Their six and four years' terms of office will give them an official experience long enough to enable them to understand both the affairs of the city as a whole and the needs of all its departments. Who so well as the members of the council can know the member of their own body most fit to be their speaker and the mayor? If we comprehend the powers to be conferred on the council, it will seem unnatural to doubt their capacity for choosing a mayor.

Let us glance at them. The legislative powers now distributed among many commissions and boards are, with small exceptions, to be devolved upon the council; to them are to be added much larger legislative powers for municipal Home Rule; in the exercise of these legislative powers the council is to consider all bills affecting the city before they are presented in the legislature; the council — we hope — is to choose members of the state senate who are to specially represent the large policy and the interests of the city; the council is to delimit the departments and bureaus and define the powers and duties of all the officers — in conformity to the charter. The powers given by law to the mayor himself, so far as they are not definite and specific, may be affected by this action of the council; the vast authority of determining the measure and disposition of the city's expenditures and of fixing the salaries of its official servants will belong to the city council

— save as qualified by the mayor's veto ; it will be the high function of the council to frame all city ordinances ; through its committees, it will be its duty to investigate all city abuses — including those in the mayor's own department — as Congress investigates abuses under the president ; all the higher appointments by the mayor will be subject to the approval of the council ; it will have a responsible part in connection with the impeachment and removal of the mayor and all the principal officers of the city ; all the doings of the city will be within the legitimate sphere of the debates and the cares of the council.

It seems obvious that a body having such large and essential powers must — rather than the mayor — be looked upon as the paramount municipal authority, which most guides the policy of the city, and is most responsible for its good government — and such is the view of our best municipal authorities.[1]

It is the *continuous*, *stable* council, representing the people and public opinion, — and not the mayor representing first one party and then another, — which by its constant policy must uphold the just claims of the city against the state and the nation, which must cause the city to maintain an enlightened and consistent attitude toward its own interests and honor, as well as toward the great forces of charity, morality, education, and religion.

It seems almost absurd to think that a council competent for such functions — or trusted by any city with them — will not be a competent body for choosing a mayor.[2]

[1] Goodnow's *Mun. Prob.*, p. 308 ; Shaw's *Mun. Gov. G. B.*, pp. 62, 63 ; and see a thoughtful paper by Frank M. Loomis of Buffalo, *Proceedings of Lou. Cong.*, etc., 1897, p. 112.

[2] It is desirable that the council should also choose an assistant mayor, or better designated a vice-mayor, to take the mayor's place when he is not able to act, and to fill it when vacant until a successor shall be elected, the election to be subject to the same conditions we shall suggest as to choosing a mayor. There might be an advantage in having more than one vice-mayor in very large cities. We have seen that mayors in the continental cities of Europe have several assistants. A true vice-mayor would be hardly more a mayor's assistant than a vice-president is a president's assistant, or a lieutenant-governor is a governor's assistant. There may be occasions of doubt or exigency when the existence of a vice-mayor would avoid mischievous uncertainty and wrangling. He

6. As it is probable that the most potent and vicious influences which may affect the members of the council in their choice of a mayor will have their origin and strength outside of the body, — in parties, factions, and mercenary combinations, — opportunities for success by suddenly bringing forward their favorites and influencing their election should be excluded to the utmost. To this end a formal certificate of nomination, to be signed by five members of the council and made a part of its public records, should be required to be made as to each candidate in order to make his nomination for mayor valid. These nominations by certificate should be made publicly ten or fifteen days before a candidate can be voted for as mayor — so as to give ample time for public opinion to make itself effective. Every member of the council should be required to have his vote recorded on the election of a mayor.

7. We have called attention to the tendency of the requirement that all mayors shall be elected from among the members of the council to bring able men of honorable ambition into this body. We may here add that it will also greatly limit the sphere and facility of intrigues and corruption in the choice of mayors — and all the more so by reason of the requirements that every mayoralty candidate must have served at least two years in the council. Who will say that the man who has not patriotism enough to render this service for the public is fit for the highest office in the gift of his city? Who will believe that the member of the council who has not capacity and fidelity enough to have made a good record in the council can ever be elected mayor by the votes of his fellow-members?

might be made chairman of a principal committee, which would give him a large experience in administration. His term of office should be three years, a year longer than that of the mayor, so that the election of both will not occur at the same time. The vice-mayor would remain to act pending any delay in the election of a mayor. Before condemning a vice-mayor on the score of novelty, we hope the reader will consider what is subsequently said on the subject. Congress declares by law who shall be president when neither the president nor the vice-president is available.

III

If from the principles involved in the election of mayors by councils we turn to some of its incidental effects, they will be found important.

(1) It is almost needless to say that a vast expenditure of money and time, and much intrigue and vicious manipulation incident to his popular election, would be avoided. It may well be doubted whether, if the councils elected the mayors, the vicious and needless partisan organizations in cities which do most to degrade their politics, and which thrive on managing nominations and elections, could long maintain themselves — whether, indeed, the party system for managing city affairs could long survive. If mayoralty elections generally involved contests of principle, so that their influence was educational and morally elevating, the large sum of money which they cost would not be too much to pay for them; but it is by no means clear that the majority of the mayoralty elections, with the party action which precedes and follows them, are not as a whole demoralizing. We have seen what degrading influences and vast sums of money are used for buying nominations, coercing and bribing voters, and hustling them to the polls.[1]

(2) The election of the mayor by the council seems likely to promote a harmonious and vigorous coöperation between the two authorities; yet, as we shall soon see, the mayor will have ample power for protecting his department and making his authority salutary and effective. He will in fact stand as the expression of the policy of the council, whose support he will naturally have in his efforts for carrying it into effect. It would result from this that city government would be one of harmony and great strength for resisting vicious combinations, and carrying a comprehensive practical policy into effect. Through such an organization, English and continental cities have been able to achieve those noble works which, as we have seen, are on a scale so much larger than anything of the kind which

[1] Chs. IV., V., and VI.

has been yet attempted in the United States. In every crisis the mayor would have the council behind him to give him courage, wisdom, and strength; nevertheless his veto power and his authority over appointments and removals would cause his office to be one of great influence and dignity. To make the mayor and the council equal and rivals is to enfeeble the government and to place it at the mercy of the boss, the politicians, and the corruptionists.

We have seen how different are likely to be the spirit and policy of a continuous,[1] non-partisan council from the spirit and policy of an inexperienced mayor, who has been suddenly borne to his place on the waves of a city-party election, in which probably some irrelevant issues of national politics may have been decisive. He brings in an element of vicious contention and weakness unknown in the city councils of other enlightened nations. "Municipal governments elsewhere than the United States," says Dr. Shaw, "after having constituted a ruling body, do not erect a separate one-man power and give it the means to obstruct. . . . The embarrassments and opportunities growing out of this divided responsibility are among the principal causes of the comparative failure of city government in the United States."[2]

IV

1. We have seen that it is the duty and practice of Congress and legislatures to investigate through their committees and report upon the doings of the executive departments — even those of presidents and governors. It should be the duty of city councils to discharge analogous functions in regard to mayors as well as all city departments. As it is the duty of the lower House of Congress to impeach and bring to trial a delinquent president, so it should be the duty of a city council to have an appropri-

[1] The reader is asked to keep in mind the fact that hardly more than one-third of the members of the council are to be chosen at any one election, so that it is legally a continuous body, the advantages of which are very great. See Chs. XII. and XIII.

[2] *Mun. Gov. G. B.*, pp. 62, 63.

ate part in impeaching and bringing to trial a delinquent mayor. The theory that a mayor may do as he pleases, unless his party arraigns him, and that he shall be responsible to no city authority, but only to the courts, for statutory crimes, or to the governor, is as repugnant to all the analogies and conditions of public safety as it is to the fundamental conceptions of republican government. It could hardly find acceptance among an enlightened people whose views of city government had not been distorted by habits of thought born of desperate municipal conditions and perverted party conceptions.

The irresponsible power allowed to mayors and the denial of essential powers to councils have not only impaired the mayor's sense of responsibility to the people and made that to party and the boss controlling, but have caused city parties and their managers to become more and more lawless and tyrannical. The politician class and the rest of the people are becoming more and more separated — falling more and more into diverging grades of municipal civilization, under which the mayor is a despot under the laws, and the boss is a despot outside and in defiance of the laws.

2. If we really desire that our mayors should have autocratic powers, they may as easily be given them when elected by the council as when they are elected by popular vote. All that would be needed would be these words at the beginning of the state code for the government of cities: "All the municipal authority herein conferred shall be vested in the respective mayors of the cities of this state." In contrast with such a municipal theory, we may place the theory upon which the national constitution is based. The first words of the first article of this constitution are these: "All legislative powers herein granted shall be vested in a Congress of the United States . . ." which is the national council. If for the last six of those words we substitute these other three words, "the city councils," the clause, thus amended, might be wisely made the first words in every state municipal code.

Yet there can be no complete and absolute separation

of legislative from executive power. Under the national constitution, the president exercises legislative authority whenever he vetoes a bill, and the Senate exercises executive authority whenever it confirms a nomination by the president. We cannot, therefore, settle the question whether a given power should go to the mayor, or to the council, by merely deciding whether it is, in its nature, a legislative power or an executive power; for there are some other matters to be considered, and especially the relations of these powers to parties.[1]

V

3. The question whether mayors should be allowed a veto power — substantially such as belongs to the president and governors — is one of importance. In the nature of things, there seems to be no good reason why mayors, as well as presidents or governors, should not have this power. It cannot fairly be said to be a power for obstruction. It is really a power which tends to secure careful deliberation and large majorities. It is all the more useful when legislative bodies, as is the case with our councils, are to consist of only a single chamber. The possession of this power would certainly be an addition to the legitimate dignity and responsibility of the mayor's office which is desirable, making it more attractive to men of high character and honorable ambition. The usual veto authority in the mayor would give him a voting power, against a measure, equal to the votes of one-sixth of the members of the council.

4. It is the special duty of a mayor, as the chief executive

[1] We attach more importance to these relations than is apparently attributed to them by Professor Goodnow. *Mun. Prob.*, pp. 186, 187. While a president and a governor must stand as the expression of a political policy, a mayor's position in this regard is very different. He cannot, as we have seen, legitimately represent one party more than another. It is true, as Professor Goodnow says, that, in a limited way, the mayor represents or acts for the state, but in a much more direct and larger way, he represents the city. If, by reason of the former representation, he should be treated as a political officer and be elected by a party vote, the same reasoning would be applicable not only to the chief of police but to all policemen. They all largely act as agents of the state — more largely and directly so than the mayor.

officer in a city and as the head of the executive departments, to stand for their legal rights and to insist on their being allowed to exercise the special powers conferred by the laws. As the head of the executive administration, he should have a special care that official duties are fairly apportioned to each executive officer, that salaries are reasonable, that good appointments are made, that promotions and removals are for just causes, that discipline is adequate, that executive methods are harmonious and effective, that responsibility is fairly awarded, that praise and blame are justly bestowed among the officers and employees of the city.[1] It will also be among the duties of the mayor to be active for bringing the whole body of the municipal servants into harmonious, vigorous, and economical coöperation; to expose, and do his utmost to bring to judgment, all malfeasance in office; to insist on ordinances being enforced; to withstand all aggressions by the council upon the functions of the executive; to insist on justice to all executive subordinates; to suggest wise measures of policy; to give warning of impending dangers affecting the city — explaining such matters in his annual messages to the council, and giving clear and full expositions of city affairs and interests. These are high and far-reaching functions — inviting to a noble ambition — which if rightly used will make the office of mayor one of great power, usefulness, and dignity.

5. Legislative bodies are too much inclined to excuse themselves from responsibility for the maladministration which they may have caused, and they sometimes unjustly censure executive officials. On the other hand, executive

[1] We do not mean that the mayor should have a controlling authority over these matters, but that they are matters to which he should give his especial and active attention, rather than to party politics — not hesitating to use his veto power in their behalf. We cannot agree with those who think mayors elected by the people should have paramount powers for organizing the methods of administration, or that they are likely to know its needs better than many of the members of the council who have served from four to six years. We have seen that party-elected mayors may know nothing of the needs of administration when elected, and may come to their offices trammelled by many promises of places for votes. Professor Goodnow's *Mun. Prob.*, pp. 234, 235. He has considered the appropriate powers of mayors.

officials are liable to favor too large salaries and too numerous executive officers. The best administration is likely to be secured when investigations and the exposure of abuses are provided for on the part of both the legislative and the executive departments. The possession of a veto power by mayors would tend to such a result, giving them an opportunity in their veto messages to vindicate their action in the council and before the people. The council can always speak through the public reports of its investigating committees.

6. On the other hand, we must not forget that the great work of municipal regeneration in Great Britain has been achieved not only without her mayors having several of the considerable powers we propose to confer upon American mayors, but without their having any veto whatever.[1]

VI

1. The other questions as to the division of power between mayors and councils relate mainly to appointments, employments, promotions, and removals. We have space for only a very general view of the subject. For brevity, we shall sometimes refer to all these powers under the designation of the "appointing power," though some parts of it, including judicial appointments, will be elsewhere considered.

There is no generally accepted system in the United States, but very great contrariety, in regard to the vesting and exercise of the appointing power. There is perhaps no American city which has been so successful in its use of this power as to make it fit for a model. It would therefore be unprofitable to enter upon any exposition of the multifarious and unsatisfactory experiments of American cities on the subject.

These experiments have had a broad range, from nomina-

[1] Shaw's *Mun. Gov. G. B.*, pp. 60, 62. Nevertheless, we believe the measure of power we have proposed for the mayor will be found salutary. It follows the analogies of American constitutions. Besides, public opinion in the United States is so favorable to giving this measure of power to the chief city executive that it might much delay municipal reform to refuse it.

tions by mayors to be confirmed by councils, to appointments by mayors as autocrats at their mere pleasure. In point of time they have extended from appointments to be made at once upon their election by inexperienced mayors, as in New York and Brooklyn, to the far better method of the city of St. Louis, under which the mayor's power does not seem to be complete for appointing until the third year of his term, by which time he may have learned the needs of the city.

2. The questions at once arise whether the appointing power should be conferred (1) wholly upon the mayor, or (2) wholly upon the council, or (3) in part, or jointly, upon both, or (4) upon some new authority to be established.

Nearly all that has been said in favor of giving the mayor the veto power is also applicable in favor of giving him a part of the appointing power as well. It would certainly increase the dignity of his office and make it more inviting to men of large ambition and capacity.

3. The experience most favorable to conferring the whole appointing power upon the council is mainly that of Great Britain. The councils in British, and largely in other European, cities make both appointments and removals. Apparently, there are no very decisive reasons, aside from public opinion, why the same method would not be equally successful in American cities, after good, non-partisan councils shall have been established.

Certainly the achievement of municipal reform in the absolute control of non-partisan councils in Great Britain, and without the mayors having either the veto or the appointing power, is a very significant evidence of the elevating and efficient force of the British system. The British people seem to be thoroughly satisfied with the results of their method.[1]

[1] Dr. Shaw says: "It is important to make it clear to American readers . . . that there is not in British cities any disposition whatever to concentrate the appointing power . . . in the hands of one man as an effective way to secure responsible administration. There is nothing in British organizations or experience to sustain the proposition of many American municipal reformers that good city government can be secured by making the mayor a dictator. . . . All appointments are made by the council itself." *Mun. Gov. G. B.*, pp. 78, 79, 62, 63.

4. Nevertheless, while strongly opposed to giving the mayor autocratic power over appointments, we must think that certain advantages may come from giving him a part of this power. The main reasons for this view have just been stated.

The rule in European cities is not merely general that mayors should be elected by councils, but it is universal both that they should not be elected by popular vote, that they should not have autocratic or irresponsible powers of appointment or removal, and that they should not be partisan officers. Such common conclusions on the part of very different nations, having very diverse forms of government, seem to create a strong presumption in favor of their agreeing methods. Yet, it still seems to us that the appointing power should in some way be divided between the council and the mayor. There might, undoubtedly, be Assistant Mayors, Administrative Boards, and Boards of Executive Control developed out of the councils which, in analogy to the methods in the cities of continental Europe, after careful experiments could be made to share the exercise of the appointing power with salutary results; but no distinct third authority appears upon which the appointing power can be conferred — save as to minor judicial officers.[1]

VII

1. Turning again, therefore, as we must, to American experience, the most satisfactory precedent is to be found in the relations, under the constitution of the United States, between the president and the Senate, according to which his nominations must be confirmed by a two-thirds vote of this body.

The appointing power of the president, as generally conferred by the constitution, extends from nominations for ambassadors, judges, and the heads of great departments down to nominations for the lowest appointed officials in the service of the nation. But this power is qualified by the

[1] See Ch. XVIII.

following language: "Congress may by law vest the appointment of such inferior officers as they may think proper in the president alone, in the courts of law, or in the heads of departments." Here are provisions for two classes of officers to be appointed, the "inferior" officers and the "superior" officers, and for three classes of appointing powers: (1) president, (2) the courts of law, and (3) the heads of departments.

2. Congress has exercised this authority in a very broad way and its action has contributed much to the facility and orderly methods of appointing officers in the national service. We shall do well to defer to these precedents. Regulations dividing our municipal service into two classes would avoid embarrassing doubts and establish regular methods in the exercise of the municipal appointing power.

3. The whole executive service of a city naturally falls into three divisions: (1) *The Labor City Service;* (2) *The Minor City Service;* (3) *The Major City Service* — to all of which the appointing power extends, and to each of which certain fundamental principles have an appropriate application.[1] (1) The Labor Service of the city will be entered through being employed by city authority, and the city ordinances must make it plain what places it includes. (2) The Minor City Service[2] includes, in every department and office, all the appointed municipal officials between the employees in the Labor Service and the members of the Major City Service. The Minor Municipal servants should be appointed, not by the mayor, but generally by his appointees, after the analogy of appointments in the national service. The members of this branch of the service should in general have no fixed terms of office, but should hold their places, not during life, but during continuing good behavior and efficiency. But the mayor and the council

[1] The hiring of persons for the Labor Service is not technically an appointment, nor is their dismissal in a strict sense a removal; yet as a matter of principle and justice they are such in an important sense.

[2] We prefer this phrase, rather than the phrase "inferior officers," used in the national constitution, for reasons, affecting the self-respect of the municipal servants, which we hope will commend themselves to the reader.

should have authority, according to standing regulations, to transfer them to positions in the service for which they are most fit.[1] (3) The Major City Service should include the class of appointed city officers above the grade of the Minor Service, and consequently would embrace the heads of departments, and perhaps some heads of bureaus. They would include the appointments made on the nomination of the mayor. Their terms of office should be so classified that not many of them will expire at the time a new mayor enters upon his office, thus reducing to a minimum the influence of prospective patronage upon mayoralty elections.

3. These conclusions will perhaps seem reasonable in view of this classification: (1) The appointing power, as to the offices of the Major class, is so important as to require the joint wisdom and coöperation of both the mayor and the council — for its exercise will very largely determine both the character and efficiency of the city government. (2) The exercise of the appointing power, as to those in the Minor City Service, should not require the action of either the mayor or the council, in reference to individual officers, save in those cases where an alleged injustice brings an individual case before one or the other of them on appeal for redress, as subsequently provided for. In the main, general ordinances and rules and the action of the appropriate officers of the Major Service must regulate appointments and removals in this branch of the service — in analogy to national methods in similar cases. (3) In the case of those in the Labor Service, where the period of employment may be short, and the numbers of persons to be dealt with may be very great, general provisions must govern all individual cases; though both the mayor and the council should have a common duty

[1] Our great cities will probably before long provide a system of retiring allowances applicable to the members of most of the branches of the municipal service analogous to the allowances already provided for in some American cities upon retiring their policemen and firemen — and to those enforced in the navy department. The original terms of entering the service could, we think, be made such as would accumulate a fund in a way which would not cause the new system to much increase the cost of administration. See Eaton's *Civil Service in Great Britain*, p. 142.

to take care that these provisions are just to all classes of laborers for the city. It should also be made a duty of the city officers who employ or have charge of laborers to give them when practicable from five to ten days' notice of the time of their intended discharge; and also, when requested, to give them a certificate — on regular official blanks — briefly stating the reason why they are no longer required or are discharged. This would be not only an act of justice to the laborers, but a considerable check upon an unjustifiable and partisan treatment of them.

VIII

It will aid us in the apportionment of the appointing power, and in conceiving the responsibility attaching to its exercise, if we have clearly in mind certain fundamental principles.

(1) This power is a power in trust which must always be exercised for the common benefit of the people, and not for the special advantage of any part of them. (2) No person can be rightfully appointed, employed, or promoted in the city service, or removed or discharged from it, by reason of his political or religious opinions. (3) The exercise of this power should everywhere be in conformity to appropriate civil service laws and rules providing for examination for admissions to the Major and Minor Services, and for registrations for entering the Labor Service. (4) As a rule, all places in the appointive city service, above the lowest, should be filled by the selection of some one within it, and when not so filled, good reason should be stated of record for not doing so. (5) No mayor, member of a council, or other city officer has a right to claim that his purposes or motives in the exercise of the appointing or removing power are official secrets which can properly be kept from the people, or which can be made available for the advantage of himself, his party, or any individual. They should therefore be publicly avowed, and may be made the subject of inquiry before the courts, as before explained.[1]

[1] See Ch. VIII.

(6) Justice requires that the grounds of removal and discharge should be given, whenever reasonably requested by those affected thereby, and a refusal to give such reasons may be fairly treated as *prima facie* evidence of an abuse of official power, and of a willingness to do injustice to subordinate public servants. There can, therefore, be no such right either on the part of a mayor or of a council as that of exercising the appointing or removing power "at pleasure," or to please anybody, the practice of doing so being both pernicious and despotic — as well as disgraceful to any enlightened city.

It may be necessary that certain officers should have authority to appoint and remove others in accordance with their own judgment of what the public welfare requires, but the duty should be everywhere inculcated of acting in that regard solely in the public interests, and of laying before the people the grounds of such action. No language can too strongly condemn any law or ordinance which tells an officer — who has perhaps won his place in a party election by bribery — that he may remove his subordinates and put his partisan followers in their places at pleasure. To act at pleasure is the prerogative of a despot. If the officer may act at his own pleasure, he may act according to the pleasure of the boss. No person is fit to be a mayor, or to hold any high municipal office, who wishes to conceal his reasons for making appointments or removals, or lacks the moral courage to avow them. A breach of the foregoing obligations is a fit subject of public investigation as provided for in Chapter VIII., and when established should, as far as practicable, be punished by law.

IX

1. For reasons thus stated we think that nominations to places in the Major Service of cities should be made by the mayor subject to a public confirmation by a two-thirds or three-fifths vote of the council. The need of a public confirmation of the nominees may be made a valuable safeguard against secret bargains and unworthy nominations. The

sessions of the council, when nominations are being considered, should be public, thus avoiding such abuses as sometimes attend the secret sessions of the United States Senate when so engaged. As many of these nominations might not call forth any important opposition, it would be useful to have it provided that if there shall not be a refusal by the council to confirm a nomination within ten or fifteen days after it has been received, it shall be absolute as an appointment; and, on the other hand, if the mayor should submit two nominations in succession for the same office which the council refuses to approve, it should have a right to fill the vacancy by a three-fourths vote for a candidate of its own nomination — provisions that would tend to prevent unreasonable controversies and inconvenient delays.[1]

2. As attempts may be made to complete appointments hastily, before public opinion has had time to make itself reasonably effective, it would be wise to provide that the council shall not take a vote as to a confirmation within, say, three or four days after the nomination has been submitted. A practice of the London Council here deserves our notice, which provides that "every person in the employ of the council . . . must be appointed or removed by the council in open meeting on the recommendation of the committee having the special departments in charge."[2]

[1] A law of New York, Ch. 857, Laws 1881, is to some extent a precedent for these provisions. If the mayor makes a nomination of a person not within the city service, he should be required to state, in doing so, that he finds no one within it competent, or at least so competent as his nominee. The advocates of party rule and of an autocratic mayoralty will oppose this, but those who comprehend the importance of inducing men of high character and capacity to enter the subordinate places in the city service from reasonable hope of winning the higher, will take a very different view of the matter. As modest and meritorious city officers have often little political influence at their command, we think there should be an opportunity, in suitable cases, either before the mayor, prior to his making nominations, or before the council or one of its committees prior to the confirmation, for publicly presenting — when the nominee is not promoted — the reasons why the vacancy should be filled by a promotion.

[2] Fox's *London Council*, etc., p. 90. It is assumed that among the standing committees of American city councils there will be one upon nominations and removals. It can of course make secret investigations of fitness, as may be appropriate; but it should be required in every case to report to the council its conclusions in writing.

X

1. The mayor should have a large power as to removals, but no right to remove as an autocrat, no power to eject any one from his office merely to please himself, his party, or anybody else. It is a power in trust to be exercised only by order in writing for the general welfare, and for reasons to be stated of record. He should have the same authority as to removals during every part of his term, and alike as affecting those nominated by another mayor and those nominated by himself. We have seen the utter absurdity and the vicious partisan intent of giving him absolute powers for making removals when he first comes into office, — ignorant, perhaps, of its duties, and trammelled by partisan pledges, — and of allowing him only small, inadequate powers afterward, when he may have become competent to exercise them.

Among all the bad laws for American cities, we must think there is none so utterly indefensible and pernicious as those which allow a mayor — who may perhaps have sold every head of a department for votes — to appoint the purchasers "at pleasure" to these places at any time within four weeks, but which denies him a power to remove them except subject to the order of a court.

2. Before the mayor proceeds to remove any officer from the Major City Service, he should cause to be served upon such officer a notice in writing, stating definitely the grounds of his proposed action, and should allow such officer a reasonable opportunity to make an explanation and a statement of the relevant facts in self-defence before the mayor — the same to be made in writing if the mayor so requires. The notice and the mayor's action and decision on the question of removal should be made a part of the permanent records of his office.

If any officer whom the mayor may remove shall not within three days appeal to the council, or shall not thereafter prosecute his appeal with such reasonable despatch as the rules of

this body will permit, the decision of the mayor will be final. No trial, after the manner of a court, should be allowed before the council, but only such a hearing should be had as its rules may provide for, or may be appropriate for a legislative body.[1] The vote of a majority of the council, after considering the appeal, reversing or approving the mayor's action, shall be final. In order to avoid too numerous and unreasonable appeals as to removals, the council should be allowed by a three-fourths vote to dismiss an appeal summarily, without any further consideration of it.[2] The right to appeal to the council — which ordinances must carefully regulate — will be a check upon the favoritism of the mayor and will lead to salutary investigations. On the other hand, the right of this body to summarily dismiss appeals which seem to have no merits, will apparently prevent such appeals being too frequently or unreasonably made.[3]

XI

1. Public convenience requires that the exercise of the appointing and removing power over the great numbers of officers in the Minor Service of cities should be less formal and more prompt than would be advisable in the Major

[1] The only proceedings, according to the strict methods of a court, which can fitly take place in regard to the kind of removals we are considering must arise from violations of law, and not out of questions of incompetency, or alleged neglects of duty. Regular court trials as to these matters involve too much delay.

[2] The subject of removals is one of much intrinsic difficulty, as to which there is a wide diversity of opinion. We can only state general principles, leaving many important points unnoticed. To give the right of appeal to a court from an order of removal, or even a right of appeal to a council if it be upon the condition of allowing a formal trial, or of observing technical legal rules of evidence, is practically to provide for long litigations and great embarrassment in administration.

[3] If it should be thought that the whole council is too large a body to deal with the least important of such appeals, and that the power to determine some of them is too important to be given to a mere standing committee, a Board of Appeals could, in appropriate cases, be constituted by drawing its members by lot from among the members of the council who have served in it two years or more, after the analogy of the Appointment Boards of the cities of continental Europe, or according to the suggestions we have made as to the boards for dealing with the appointment and removal of justices. See Ch. XVII.

Service. Except as the mayor and the council may be given an appellate authority, neither of them should have any part — save through the enactment of ordinances — in making either appointments or removals in the Minor Service. This power should generally be exercised by the heads of departments and officers, as to their respective subordinates. The other provisions suggested for the protection of the public interests, and for securing justice to the municipal servants, which apply to officers in the Major Service, and especially the provision as to stating the grounds of the proposed removal and giving an opportunity for an explanation before making it, should be observed in regard to those in the Minor Service.

2. It is probable that after non-partisan councils shall have been well established, it will be found practicable and useful to provide for several assistants to the mayor in large cities, in analogy to such assistants in the great cities of continental Europe. These assistants, with the chairman of some of the standing committees of the council, might be made to constitute a board upon which the power, or at least the appellate power, as to appointments and removals in the Minor Service and the Labor Service might be conferred.

In the meantime, as we are to have a vice-mayor, authority may be conferred upon him which can be used to prevent injustice to members of the Minor Service and of the City Labor Service — in connection with removals. He should have no power to interfere with appointments, or to obstruct the administration, but merely a power to protect the members of these branches of the city service who quite generally under our American system suffer from the partisan bias and official favoritism of their superior officers. Those in these branches of the service who regard themselves as wrongfully removed or discharged should have a right — according to appropriate ordinances — to appeal for redress either to the mayor or the vice-mayor. It should be the duty of the officer to whom the appeal may be made to look into the facts, and, if he thinks the matter deserves investigation by

the council, he should report it to this body, which should be required to give it the proper attention.[1]

The author is quite aware of the scorn with which mere partisan politicians and spoilsmen will treat most of these suggestions made in the interest of justice to municipal servants. American party men are generally too little accustomed to the thought that these servants have any claim upon common justice and considerate treatment which they are bound to respect. Mere politicians naturally think that he who has gained his office through partisan servility and official favoritism may be justly required to hold it as a feudal vassal, and be thrust out at the mere pleasure of bosses and autocratic mayors. In no other enlightened cities of the world are their municipal officers so despotically and unjustly treated as are those of the cities of the United States. If we would have that competent and worthy class of municipal servants essential for good city government, we must insure them a tenure of office and a just treatment inviting to such men and consistent with their self-respect. Our letter carriers — and the street sweepers in New York City under Colonel Waring — have shown us what excellent servants may be secured if we duly protect them against the politicians.

XII

The proper method of removing mayors is one of importance, as to which there is a wide diversity of opinion. If our governors were not the representatives of parties, there would be some advantage in giving them an authority for

[1] Those wrongfully removed can, under the existing system, only appeal to a private (civil service reform) association. The mayor is not a fit authority to have the sole power to take such action, for the complainant may be a person wrongfully removed by the mayor's connivance and by his own appointee. The vice-mayor is likely to be a more independent officer than the mayor for such a purpose. We think salutary results might come from allowing a public servant refused promotion to appeal — according to careful regulations — to the vice-mayor, asking him to request the council to make an investigation of the facts presented — if in his opinion they make it probable that the promotion in question has been secured through unjustifiable influences, or that the complainant has been wronged by not being promoted.

removing mayors; yet there would be these fatal objections: (1) that such an authority would involve the mayoralty in party politics, and (2) that its exercise would seriously impair the requisite independence for Home Rule in cities. To confer the power upon a court might to a large extent take it out of partisan control, but it would involve long and expensive trials very likely to last beyond the term of mayors.

The council seems to be the most safe and competent authority for the removal of mayors, for much the same reasons that it is the fit body for choosing them. But no removal should be made by the council save upon definite charges in writing, nor until after an adequate opportunity for a public defence; and to prevent a removal for inadequate reasons — or to serve party ends — an affirmative vote of three-fourths of the members of the council should be required to accomplish it. It might, perhaps, be wise to provide that the Chief Justice of some high court should preside over the council when the removal of a mayor is the subject of its proceedings.

As an alternative method of removal, provisions might be made for a mere impeachment of the mayor by the council — a two-thirds vote of its members being required for this — and for a hearing before certain judges and members of the council — being those members who have served at least three years — to be selected by lot according to provisions we shall set forth in Chapter XVII. This method would effectually exclude mere partisan influence, while favoring a greater independence on the part of mayors.

CHAPTER XV. — CONCERNING SCHOOL ADMINISTRATION AND SANITARY ADMINISTRATION

1. Partisan influence and divisions disastrous to such administration. Why there should be School Boards. State officers should inspect schools. Boston, Brooklyn, and New York City School Boards. School officers from the nature of their functions should be non-partisan. Why mayors should not appoint school officers. Two distinct branches of school administration. The proper composition of School Boards and the true method of choosing their members. Their terms of office. Presidents of Boards should be members of city council. Such Boards should appoint school officers. Probable character of such Boards. Present School Board of New York City. Good in particulars, but serious objections to it. In large part based on the spoils system.

2. Why Sanitary Administration requires an Executive Board. Its appropriate members. Their party opinions immaterial. Duties of Board of Health. The New York Health Law of 1866. Sanitary condition before its enactment. Its unique provisions and practical effects. Need and utility of a state sanitary code. Mistake of having different health laws for cities of different sizes.

1. In dealing with school administration we must confine ourselves to the best methods of selecting school officers, and of organizing and using political power. There are many excellent men on American School Boards, but their membership is believed to be by no means so good as the local communities could and would supply but for partisan reasons. In some states there are very good school laws of general application to municipalities, but in others there are no such uniform and comprehensive school laws as are greatly needed. The consequence is an embarrassing number of incongruous statutes and diverse methods of administration in the different cities even in the same state, resulting in needless uncertainty, confusion, and litigation. Any state which should adopt a sound and truly uniform non-partisan code of school laws would render a valuable service.

We can consider only a few of the general principles which we think such a code should embody. There seems to be a general, and we think a well-founded, conviction in the United States, (1) that a municipal department of

education cannot be wisely placed under the control of a single head, be that head a commissioner or a mayor; (2) that it should be managed by a separate board or body composed of several members who need to have large powers more or less legislative in their nature; (3) that they should fairly represent the local community itself, and not merely parties or a party majority; and (4) that the local school administration should be subject to some sort of effective state inspection and supervision in the interest of harmony, fidelity, and economy, as explained in the first chapter. This view has been enforced in England with salutary results.

This conviction seems to be not only a repudiation of the theory of autocratic mayors, but an approach toward the theory upon which we have decided to organize city councils. Nevertheless there is a great diversity of opinion as to the proper constitution of School Boards. In Boston, for example, eight members, being one-third of the School Board (called the School Committee), are annually elected by the people, and the mayor seems to have but limited functions as to public school administration.[1] In New York City (1897), the autocratic mayor annually appoints seven of the twenty-one members of the Board of Education, with the natural result that the school administration is much involved in party politics. The condition has been similar in the city of Brooklyn. In some cities the party majority elects all the members of the Board of Education, and in others the party-elected mayor appoints all of them, thus making the control of the school administration potentially, if not actually, a party affair. It is not very uncommon under this elective system for the choice of members of the School Board to be made a direct party issue, which is certainly very unfortunate. We have seen that, under the method of voting which largely prevails, it happens that even in large cities, in which the adherents of the different parties are nearly equal, one party may, and sometimes does, elect every member of the Board,[2] — an unjust

[1] *Boston Mun. Register*, pp. 8, 164.

[2] See pp. 242-244.

result which impairs the confidence of the public in the school system and increases the amount of mischievous party patronage.

A main reason why the school system should be kept separate from the other parts of city government — whether the system be under appointed or elected School Boards — is to be found in the facts that it has no legitimate connection with party politics, and it is highly desirable to induce the people to take a non-partisan interest in its prosperity. Its administration should therefore be separated to the utmost from all party issues and methods.

We have seen that the method of Free Voting has long been applied to the election of School Boards in England.[1]

2. The need of securing non-partisan school officers of every grade, who are independent enough to be just to all citizens, irrespective of sect or party, is very great. To make these officers appointive at the mere pleasure of a party-elected mayor is utterly indefensible on any ground of principle or sound policy. Almost sure to be more or less partisans, mayors thus elected are very unlikely to be independent enough of the managers of their party to make such appointments for school officers as the public interests require.

Mayors thus elected are not usually well informed as to the public school system. Why then — save to make them autocratic and to increase mere party patronage — should mayors go into an independent department of city government to appoint its officers?

3. Analogous reasons to those which have made local Boards of Education separate departments have caused them to be placed under some supervision at the hands of administrative officers of the state — in order to remove them as far as practicable from local party interference. "It is universally admitted," says Professor Goodnow, "that schools should be administered as free as possible from political influences; the effort of the educational reformer has therefore been to decrease the power of the legislature, and increase

[1] See pp. 242, 244.

that of the administrative bodies of the state government over schools. . . ." Great changes have been thus effected; school inspections are now largely made by these bodies, and reports must be made by local school authorities to them. He says no one can deny that vast improvements have accompanied such changes of method.[1] It seems almost obvious that just to the extent that inspections of local school administration are made by state administrative officers, and reports are made to them by School Boards, — which shall bring abuses to light, expenditures into comparison, and establish harmonious, well-matured methods, — we shall not only prevent needless, special school laws, but shall put salutary restraints upon party domination, and patronage-mongering on the part of mayors and politicians.

4. Administration connected with the public schools has two distinct branches: (1) the providing of school buildings and the keeping of them in repair and furnished for use; (2) the devising of good, educational methods, and the management of public instruction. The qualifications needed for controlling one branch are quite different from those needed for the other. Neither of these functions has any legitimate relations with party politics. Yet nothing is more natural than that both parties and sects should seek, in their own interests, and from zeal for their own dogmas, to dominate every branch of school administration.

As to the part of the administration first mentioned, which relates to mere business, there is no need that it should be carried on by a Board of Education. It should be sufficient for the Board to make its needs known to the department of public works or buildings, which should have a duty — and ought to be competent and ready — to supply them, as the city council and ordinances may direct. This department should build, furnish, and repair schoolhouses, as it builds, furnishes, and repairs courthouses, jails, police stations, and prisons — under a good municipal system. It has a great body of skilled laborers, purchasing agents, and mechanics constantly in its service. Their employment as proposed

[1] *Proceedings, Louis. Conf. for Good Government*, 1897, p. 73.

would obviously harmonize official duties, and would probably reduce the cost of municipal administration. Why should we be required to select members of School Boards in reference to very diverse functions? Why not as fitly ask judges to build their courthouses, as School Boards to build their schoolhouses? The Boards should, of course, effectively advise as to the accommodations to be supplied by these houses.

5. The remaining questions calling for our notice are these: What should be the composition of Municipal School Boards? How should their members be selected? What should be their terms of office? What should be their authority in regard to the selection and removal of their subordinates?

We think the number of members on School Boards should be from nine to thirty-six, — having reference to the population of the municipality, — that their terms of office should not be less than three years nor more than six years, and that they should be so classified that one-third of them will be renewed biennially. In a large city, a term of three years requires too many elections, and does not secure adequate experience for the discharge of the complicated duties of members of School Boards.

Assuming an elected Board to be composed of eighteen members, two-thirds of them should be elected by the popular vote of the city at large — as aldermen at large are to be elected — for a term of six years, and they should be so classified that one-third of them shall retire biennially. The other third should be selected by the council — as nominated aldermen are to be chosen — for a term of four years. The methods of Free Nomination and Free Voting, and the other analogous provisions, should be applied to their selection, as in the cases of electing and appointing aldermen.[1]

In thus choosing four members biennially, by popular election, — at which every elector could cast four ballots and bestow them according to his sense of duty, — a party could hardly find it possible to grasp the control of the Board at

[1] See on these points Ch. XI.

any one election. All large interests would be likely to secure fair representation, for reasons we have stated and need not repeat. One more than one-fifth of the voters, by uniting their votes, could elect a man who would fairly represent themselves.[1]

6. The selection of the other six members of the Board by the council would seem to have important advantages. We have given the reasons why it is probable that the council would represent public opinion rather than mere party opinion, and why the members it would choose would be neither extreme radicals nor mere partisans. The council, which, as we have seen, must guide the policy and control the expenditures of the city, is the natural bond of union between the different parts of a municipal government. Such methods of constituting School Boards would apparently do much to disconnect the choice of their members from mayoralty elections and the party issues involved in them.

7. The council, which elects the mayor and makes all the city ordinances, even including those of the Board of Education, will certainly be abundantly competent for the duty of choosing a third of its members. If the council should sometimes select men for members of the Board who have served in its own body, they would bring all the more valuable experience and legitimate influence to the Board of Education. As this Board must need the aid of the council in connection with appropriations and buildings for school purposes, it is important that a good understanding should always exist between the two bodies. To these ends, we think the president of the Board of Education should be *ex officio* a member of the council with a right to take part in its debates, to which he could obviously contribute valuable information. The ordinances relating to a Board of Education must be complicated in their provisions and relate to many important subjects. While the council must be the paramount authority on the subject, the School Board should have the amplest opportunity for being

[1] See Ch. IX.

heard before that body. We think, therefore, that no ordinance affecting the action of the Board should be adopted or changed by the council until after the Board has had an opportunity of being heard before it upon the subject.

It is desirable to do everything proper for increasing the prestige, experience, and dignity of these Boards. Why should they not be allowed to elect a few honorary members of their body after the analogy of the suggested Honorary Members of the council? They might be selected from ex-presidents of colleges, ex-school officers, and ex-members of the School Board itself.[1]

8. Nearly all the offices of the school department below the grade of members of the School Board should be filled on the basis of the Civil Service examinations, the higher positions being, as a rule, filled by promotions from the lower, as we have before explained as to other officers. The Board of Education, if at all competent for its functions, must be by far the fittest authority for filling these places. If it should be thought useful to have some of these officers — those perhaps engaged in inspections and reports — somewhat independent of the Board, they might be either selected or confirmed by the council. To have them appointed by the mayor would be to involve their functions with party issues and elections. School Boards thus constituted would, apparently, represent the real interests and convictions of the community concerning the schools, and not merely those political conglomerations of forces in city elections that result from compromises and deals in which the issues of national and state politics rather than school matters are taken into account. In our School Boards we should certainly have decided convictions and earnest debates about school affairs. The people would naturally take an increased interest both in school elections and in school administration. School superintendents and other school officers in great cities would feel the need, under such a system, of regarding the independent public sentiment as to school affairs. It would not be enough to merely

[1] See Ch. XI.

court the favor of party managers and majorities. A very different class of men from those generally chosen might be made members of School Boards. School administration might gain as much in intellectual and moral power as parties would lose of illegitimate influence and vicious patronage.

II

1. The difference between non-partisan, truly representative School Boards and the Boards which spring from party theories and autocratic mayors may be illustrated by the recent legislation of New York.[1] A law of that state has provided for a new School Board for New York City, which has control of its schools and school system, subject to the provisions of law for state inspection. This statute, passed when the reform sentiment which elected Mayor Strong in 1894 was a considerable force at Albany, has some excellent provisions, and by no means embodies the extreme party, or autocratic mayoralty, theories, though it is very seriously impaired by them.

It provides for twenty-one members — commissioners — of the School Board, but for no election of any of them. The mayor is to appoint all of them. A great addition is thus made to the patronage-mongering influences which are powerful in mayoralty elections. Those voters who are especially interested in the schools — but are not active party men — have no opportunity to unite upon and elect such commissioners as they desire. All school patronage is made a part of the vast mass of patronage and spoils which the mayor is to dispense, and which helps make the appointing and removing power the dominating force in mayoralty elections. The selfish sects and partisans can arrange with mayoralty candidates to give their votes for promises of School Commissioners and other school officers. The whole theory of separating the School Administration from the party system is repudiated by this law. The School Commissioners, who should represent all classes of the intelligent people, are

[1] Ch. 387 of N. Y. Laws, 1896.

likely to be all of one kind — responsive either to the interests of a dominant party majority or of an autocratic mayor.

The commissioners are to hold their office for only three years, and they are to be so classified that the mayor is to appoint seven annually. While this classification is some check upon mere party domination, it would be far better if the term were six years, for it would reduce mayoralty school patronage by one-half, and would enable the commissioners to become more competent for their duties. But we should not forget that both mayors and parties desire the largest possible patronage, and this every year.

If the New York law had been framed in the spirit of the laws regulating appointments by the mayor of St. Louis, — he not being allowed full power to make them until the third year of his term, when he will have learned much of the needs of the city, — it would be far less objectionable. The New York law requires the mayor, elected in November, to have his seven commissioners appointed by the third Wednesday of the same month, — and they are to take office in January, — thus apparently requiring them to be made before the passions of the campaign have burned out, or the election pledges of the mayor have been forgotten.

2. The law provides for fifteen school inspection districts and for five inspectors for each, — also to be appointed by the mayor, — to be so classified that one-third of them will be appointed every year. Why thus facilitate annual political appointments which run through the whole school organization? If it can be shown that the School Board is not best fitted for such appointments, why not have them made by the non-partisan city councils — a method which would take these officers out of party politics?

3. We may highly approve the provisions of this law to the effect that the superintendent of schools shall not be removed save for cause, or by a vote of not less than two-thirds of the members of the School Board. But what shall we say of its unjust, inconsistent, spoils-system provisions which declare that the clerk of the Board, the assistant superintendents, and the whole body of its clerical force

"are to hold their respective positions *during the pleasure of the Board*," — that is, may be removed by a bare majority of this body, which may have just received seven party favorites into its membership — without avowed reasons, at mere caprice, and perhaps to serve party ends. These removals may be made without allowing the officers proposed to be removed the least opportunity of making any defence or even explanation.

These officers are likely to be persons of high intelligence and sensibility, though if they are not it would be unworthy of any enlightened city to thus treat its public servants. Any decent Board of Education should be ashamed to remove one of its officers at mere pleasure, or for reasons it is not willing to publicly avow and defend. No city deserves a good school system, or is likely to have one, which allows its minor school officials to be thus treated. Of this law it may be said that no part of its provisions would be violated if the mayor should appoint every commissioner from the same party and for the avowed purpose of promoting its advantage, or if every one of the clerical servants of the Board should be annually discharged, with the proclaimed intention of making patronage and spoils for the members of the Board, their party, and the mayor. In a very large part of its provisions, therefore, the law is equally in the spirit of an autocratic, irresponsible mayor, a despotic partisan spoils system, and a city-party government.

III. *Sanitary Administration*

1. It is easy to see that the existence of a continuous council — which makes all the ordinances — greatly increases the safety of intrusting the executive direction of the several departments to a single head. The experienced council is always at hand to investigate and redress abuses, to give advice, and to supply wisdom for emergencies.

Nevertheless, there are several departments which, for peculiar reasons, require an executive Board of several members for its head. We have just considered one of them —

the Board of Education — and the Board of Health is another. It is almost too plain for discussion that there can be no good Board of Health without persons well instructed in medical sciences and sanitary administration having an important part in its management. Yet a good medical commissioner may be utterly incompetent for dealing with the legal and constitutional principles, the rights of property, and the business interests with which a Board of Health must deal. The advantage, in a great city, of having a lawyer of sound judgment — sure to be all the more useful if he has been a judge — as one of the members of the Health Board is very plain.

As such a Board has important duties in connection with light, ventilation, water supply, drainage, and buildings, both private and public, it is highly desirable to have among its membership a person specially qualified for judging of such matters. Thus three widely different qualifications, rarely combined in the same person, are needed upon every Board of Health.

Such a Board can hardly have, through its own subordinates, the means of exerting either the physical or the legal power which is essential for supporting the numerous struggles it must maintain against those who violate the duties, ordinances, or laws it is bound to enforce. It consequently needs to have a close alliance with the police force, which is best effected by making the head, or some high officer of this force, *ex officio* a member of the Health Board. We can see therefore how unwise it must always be to trust the diverse and dangerous powers of such a Board to any single officer.

2. Another class of reasons lead to the same conclusions. No official powers are less clearly definable, or are more summarily and secretly exercised, than those of a Board of Health. It both makes its orders, and directs and supervises their prompt execution — often acting the part at once of prosecutors, of judges and jurors, of sheriffs and constables. Hence the plain need that every Board of Health should have in its membership, not only experience and capacity of

different kinds, but every possible guaranty of wisdom, deliberation, and justice in its action. A single judge is safe, for he must act publicly, must follow precedents, and must hear both sides before he directs the execution of his orders; and he is subject to appellate authority. But a single health officer, who may act secretly and summarily, may easily become an effective force for party despotism, as was notoriously the case in New York City before 1866, when a Board of Health of the kind here suggested was first established.[1] There is reason to believe that in some American cities party managers regularly count upon the exercise — or the threat of the exercise — of the powers of the single health officer as an effective force in partisan warfare for extorting political assessment and coercing voters.

3. It is too plain for argument that the party opinions of health officers are intrinsically immaterial, that all controlling party bias or zeal on their part are disqualification for their duties, and that every kind of party interference in their selection and doings is an evil against which the criminal law should be directed.

4. According to theories quite generally accepted, a Board of Health is to be regarded as a body whose supreme duty concerns local Home Rule and safety. This is a selfish and largely untenable view, being a part of the false and superficial system of Home Rule which we have felt compelled to controvert. Pestilence and contagion regard no governmental lines, but from villages and cities sweep over whole states. The state has a common duty to protect all its people; and if any local health officers, by reason of incapacity or neglect, allow causes of peril to the public health to be developed, or to enter the state, the state will be unfaithful to its obligations to the whole people if it does not supply a prompt and paramount health authority which will supersede or coerce the delinquent local officials. The New York state health officer, the quarantine commissioners at New York and other ports, and the action of the national govern-

[1] Under N. Y. Law of 1866, Ch. 74 and Ch. 686. See *Heister, etc.* v. *Board of Health, etc.*, 37 N. Y. Rep. 661, and 70 do. 536.

ment for the protection of health under the power to regulate commerce are but broader examples of the same paramount function and duty — a duty utterly incompatible with the alleged right of a municipality to do as it pleases in reference to sanitary affairs.

5. It was such views as to the duty of the state which gave form to the New York health law of 1866 to which we have referred. It is a law peculiar in theory, framework, and administrative methods, and it has produced results so beneficial as to deserve some notice, though many facts of importance can be allowed space only in notes.[1]

6. It was deemed desirable to bring within the jurisdiction of this Board various matters which — being regarded as nuisances — had generally been supposed to entitle the offender proceeded against to a trial by jury — a trial likely to disastrously affect the salutary efficiency of the Board. The attempt was therefore made by this law, and by the ordinances and regulations for carrying it into effect, to give

[1] Previous to its enactment the sanitary condition of New York City had been as alarming as it was corrupt and despotic; the single health officer — subordinate to the mayor whom the dominant city party elected — had habitually prostituted his authority for carrying the elections and extorting assessments in aid of his party. There had recently been a non-partisan uprising in favor of sanitary reform. There had begun to be distrust of party-elected mayors, and doubt had begun to show itself on the part of the most intelligent citizens as to the wisdom of the theory of achieving sanitary reform "by giving all power to the mayor and holding him responsible." A law based on a different theory was demanded and enacted. It was to be made applicable not only to the cities of New York and Brooklyn, but to considerable outlying districts, being nearly coextensive with the district which is now included under the law of 1897 creating the Greater New York.

A bill creating a Board of Health was framed substantially upon the theory which we have set forth. The successors of the first four commissioners named — whose terms were so classified that one of them would retire each year — were to hold office for four years. No mayor and no popular election were to have any part in filling the offices or controlling the administration under the law.

While the law gave much larger powers to the Health Board than any other Health Board in this country had ever possessed, or, perhaps, yet possesses, the exercise of it was so justly regulated that the Board practically had less opportunity for arbitrary, secret, or corrupt action than was possessed by most health authorities in American cities. The Board was given the whole ordinance-making power pertaining to matters within its jurisdiction — for there was no competent or non-partisan city council. The Board was given even a power of making arrests. Laws of New York, 1882, Ch. 410, Sec. 623.

the Board the extensive powers it needed, and consequently to practically so restrict the false and pretended right of trial by jury, that it could not longer be used effectively in aid of partisan and demagogical influence for the purposes of obstruction and impunity. That quite original attempt was very successful, and no provision of the law has been more useful.

The salutary power of the Board thus constituted was conspicuous from the outset. Under the law — the fundamental provisions of which are still enforced — many thousands of cases of nuisances of the most varied kinds have been justly and speedily dealt with by the Board without any jury trial, and thus the sanitary condition of New York has been greatly improved.[1]

7. It was a part of the theory upon which this law was based — the same theory which has largely given form and character to the city council herein proposed — that good sanitary administration can be best secured by appealing to public opinion rather than to party opinion, and through a *continuous* sanitary body, the control of which no party can grasp as the prize of a victory in a single election, yet a body the members of which shall at all times be fitly responsive to public sentiment.

It is not too much to say that the Board of Health thus created has been the most just, powerful, and useful body for sanitary administration which has ever existed in the United States. It has found a great source of its strength in the provision for giving the persons to be affected by its proposed action a fair opportunity, in all important proceedings, for appearing before the Board and presenting evidence in their own defence before final action should be taken; but it allowed prompt and summary proceedings in other cases.[2]

[1] As the writer drafted this law and the Code of Sanitary Ordinances under it, and was for several years the legal adviser of the Board, he is able to speak definitely of its practical effects.

[2] Sec. 14 of the act. The justice and utility of the proceedings under this Board were such that, after the Tweed faction had triumphed in 1870, it did not venture to repeal its fundamental methods which still survive, though for party

The following significant facts illustrate the non-partisan character, the moral tone, and the stability of administration which such a law has secured: no case of fraud or corruption has yet (1897) been proved against the Board of Health or any one of its officers; the investigations of New York City affairs in 1895 — in which fraud and extortion were proved against various officers and departments of the city government — disclosed nothing of the kind against the Board of Health, and left its officers undisturbed; the same person who was first appointed to the important office of secretary of the Board of Health in 1866 now holds the same office which he has filled continuously for more than thirty-three years.[1]

8. Next in importance to a well-constituted Board of Health, and competent members to fill it, is a code of good sanitary laws for the state, appropriately applicable to every city within its borders. Neither New York nor hardly any American state has such a piece of legislation. Yet the health laws and ordinances applicable to the city of New York contain most of the provisions needed for such a code, and they have the great advantage of having been thoroughly tested by practice.

The importance, in the interests both of justice and safety, of having the powers and duties of all the Boards of Health in a state clearly defined, is manifest. All uncertainty on these points facilitates despotism and neglect of duty on the part of health authorities, tends to the prostitution of their powers for partisan purposes, and causes excessive litigation and needless peril to the public health. Such a code should clearly set forth not only what powers the Boards of Health — allowed the largest authority — may exercise, but also what parts of these powers are allowed to Boards of a more

advantages New York City was made a separate sanitary district, and the mayor was given the appointing power. The Board now (1897) consists of four members, of which the Health Officer of the Port of New York and the President of the Board of Police are two.

[1] It would have been a great detriment to the public interests to have had a succession of short-term secretaries according to the party method of electing them.

limited jurisdiction and authority. Upon the granting of a new city charter, a brief reference to this code would define the powers conferred on the subject of public health; every decision of the courts on sanitary subjects would apply to every city; the duties of health officers would be better defined, and the rights and safety of the citizen would be better protected.

The state Board of Health should be allowed adequate powers for superseding for the time any local Board of Health which, by its neglect, has allowed the common safety of the state to be imperilled.[1]

9. It is an unfortunate incident to the advantages of our national system that we must have, in the main, independent health administration in each state; but to make this evil worse by allowing every city and town to be independent in this regard, seems little short of connivance at our own peril. Is it too much to hope that some state will soon be wise enough to prepare a model state sanitary code which the other states can in the main adopt?[2]

The state of New York has done much in the way of

[1] See precedents on this subject in Ch. II.

[2] It is not very auspicious for an early result of this kind that the constitution of New York, as amended in 1894, divided its cities into three classes: (1) those having a population of 250,000 or more; (2) those having a less population, but not less than 50,000; and (3) all the other cities — of which latter class there are thirty. Two boards of commissioners were appointed by the governor in 1895, — one to draft a model charter for cities of the second class, the other to draft such a charter for those of the third class. The draft of charters thence resulting are not only in principle and detailed provisions widely dissimilar, but provide very different powers for Boards of Health, — two distinct systems in fact, — their authors apparently failing to see the advantages of a state sanitary code. Apparently, still another system remains to be devised for the larger cities of the first class, though no good reasons appear why one system, with appropriate adaptations, and the same non-partisan methods, should not be enforced, as we have explained, in all the cities of the state. There seems no good reason why a Health Board in a city of 20,000 or 30,000 people should not — like judges, sheriffs, and constables there — have as large powers as such a Board and officers in a city of 40,000, 60,000, or 250,000 people, though it may have less frequent occasions for using them. Such diverse systems of health laws must lead to much confusion and needless litigation. Apparently, when, under such different systems, a city of the third class shall come to have 50,000 inhabitants, or a city of the second class shall come to have 250,000, it will suddenly and rather grotesquely pass from one code of local laws and ordinances directly under another, with, perhaps, rather embarrassing consequences.

demonstrating the advantage of a state Board of Health having adequate powers over the local Health Boards to be exercised whenever the action of the Boards is inadequate. Mr. Fairlie has set forth interesting facts on the subject which deserve the attention of legislators.[1]

[1] *Cent. of Administration in New York*, pp. 136-147.

CHAPTER XVI. — CONCERNING POLICE ADMINISTRATION

Nature of the duties of policemen. Need that they should not be partisans. Must treat members of all parties alike. Theory and effect of bi-partisan police commissions. Such commissions demoralize policemen and cause corruption. Parties create bi-partisan commissions in order to secure a monopoly of patronage and spoils. Vicious Massachusetts laws on the subject. A still worse police law of New York. The best citizens for policemen declared incompetent, in order to give the partisans of Albany a monopoly. Whether policemen are state or are mere municipal officers they should regard the rights and interests of the whole people. They should be impartial as between state and the city.

Reasons why the state should pay part of the cost of maintaining police in cities. Practice on the subject in European countries, and its utility. Some state officer should inspect local police. Such inspection would be highly useful. Police system of Great Britain. Kind of state inspection American policemen need. Policemen will soon be needed outside of cities. The effect of the state inspections we now have justifies its extension to the police. Why policemen should sometimes be used instead of militia to suppress mobs and riots outside cities. Great need and utility of a state police code generally applicable to all municipalities. What the code should provide. Easier service should be provided for the older policemen. Retiring allowances. Whether there should be a "single head of the police," and the meaning of this phrase. Why the mayor should not be head of the police. What power the council should have in regard to it. Why impossible that any single officer should control all police matters.

We have referred to several problems of police administration, but the subject requires further notice. It is essential that policemen should not be partisans, or seek to promote the interests of any party, sect, or faction. They should be impartial and just alike toward all the people — their protectors regardless of their political or religious opinions. They should be selected and governed irrespective of political or religious views or affiliations, and should be so disciplined and instructed as to develop and sustain a non-partisan spirit. Just in the degree that any policeman, or officer of the police force, has a controlling bias of mind for or against any party, faction, or sect, he is unfit for his position.

1. There is, legitimately, no republican way and no democratic way of being a good police officer; but one non-parti-

san, patriotic, and impartial way, which should be the same in every part of the state. Every police officer ought to strive to be an impartial servant of the whole people for the execution of the laws and the lawful commands of superior authority. A community incapable of thus regarding its policemen cannot have, and can hardly deserve to have, a good city government.

The policeman's position is largely that of the soldier, though the policeman has more liberty and may be held to a greater individual responsibility than the soldier.

There is nothing in the functions or legitimate discipline of policemen which tends to make them either partisans or electioneerers. If not tempted or coerced by politicians and party managers, policemen would, as regularly as soldiers, attend to their duties and become true servants of the people. The greatest difficulties of policemen, as well as the most vicious influences which they encounter, arise from the interference of parties and their managers. Under a well-devised and well-managed municipal system parties would not be allowed to have, nor would patriotic and legitimate parties seek to gain, any more control of the police administration than of that of the army and the navy. We can have a good non-partisan police force, which will treat all the people fairly, as soon as we place it under laws and regulations which disregard all mere party and sectarian interests, and give its members a real liberty and power to properly discharge their functions.

2. It is obviously the duty not only of all citizens, but of all parties and factions, to do nothing inconsistent with the non-partisan discharge of the duties of policemen. But parties and politicians generally take a very different view of these matters. They insist on a party test for entering the police force; they claim that active party men are the best policemen; they declare that such men have the highest claims upon the offices under police departments.

If that theory be true, every party should insist on filling with its most active adherents not only every place on a police commission, but every position under it. This has

been the half-civilized theory upon which Tammany, most politicians, and many American cities have habitually acted, save as coerced by the civil service reform laws.

Experience has so far shown the disastrous effects of enforcing this theory that public opinion, in many parts of the country, has become too enlightened for its safe avowal by parties. They dare not longer openly insist on a police force, or even a police commission, being composed of the adherents of a single party or sect.

3. Candor, consistency, and truth require them to admit, as a consequence, that neither mere partisans nor politicians, but only such fair-minded men as we have described, are fit to be made either policemen or police commissioners. But city parties have not patriotism enough for this. It would suppress much party patronage and spoils, and would in principle condemn the whole party system for governing cities. They therefore insist — and so, very thoughtlessly, do many more worthy men — that representatives from each party shall be balanced on police commissions. Under this system one unfit man is to be employed to compel another unfit man to do his duty. This is the origin and theory of bi-partisan commissions.

It is really a party device for securing a party monopoly of patronage and spoils, and for dividing them between the managers of the great parties — often conspiring together.

Bi-partisan commissions would seem grotesquely absurd were it not for the glamour of justice with which party illusion and ambition clothe them. They involve the confession that partisan zeal and activity, in city-party politics, generally disqualify men for doing justice and being honest where party interests are concerned. Why not then make police commissioners, as we make generals and admirals, out of non-partisan, fair-minded, independent men who desire, and are able, to treat all citizens with common justice regardless of party. This is a too disinterested and patriotic policy for mere politicians; and until we are enlightened enough as a people to do this, it is very likely that bi-partisan commissions, bad as they are, may be better than

commissions composed wholly of politicians from the same party.

4. The theory that police commissioners are to be selected not because they are most fit for the police service, but because they are party favorites, has far-reaching and disastrous consequences. Parties and their managers would be indifferent as to their party affiliations, if police officers were not expected to use their official power effectively for party advantage. The police commissioners representing a party are regarded by its managers as having a duty to gain for it all possible patronage, to aid its electioneering leaders and captains, and to supply its treasury with money extorted by policemen through fear of their power. It is a flagitious doctrine disgraceful to any enlightened community. What more natural than that such commissioners should choose unscrupulous, partisan policemen ready to serve their party in all possible ways? What more natural than that such policemen should become the vassals of party managers — as ready to extort blackmail as they to levy party assessments?

As every bargain between these commissioners to bring active, party electioneerers, rather than conscientious, non-partisan citizens, upon the police force inures equally to the advantage of the leaders and bosses of both parties, is it any wonder that they are so often found in conspiracy with each other? Republican electioneering bullies and manipulators are made policemen, and are allowed to go unpunished for their offences, by the votes of democratic commissioners, on the condition that democratic desperadoes, bribers, and blackmailers on the police force are saved from punishment by the votes of Republican commissioners. The bi-partisan system strongly tempts the commissioners to combine against the public interests for party gain, and to reject the most worthy applicants for places as policemen. They divide patronage between them, and become its active purveyors; they are naturally more anxious to secure effective agents for their party than impartial police officers for the people — officers who will be the minions of neither a party nor a boss.

5. These influences impel bi-partisan commissions to a constant, indecent, and degrading competition for party advantage, and strongly tend to bring upon the police force the most astute partisans and most unscrupulous electioneerers whom the respective party commissioners can secure. They know that the city-party managers generally prefer such policemen to those who will attempt nothing for mere party gain. Hence the hate of these managers toward non-partisan commissioners; hence the natural fear of non-partisan policemen to fully discharge their duties.[1]

6. Men thus made policemen naturally see their advantage in imitating the commissioners, and in servility to their party and its boss. If a policeman may use his power to serve a party, why may he not use it to serve himself, — to levy blackmail, and aid the party leaders? If policemen may be appointed and promoted for party advantage, why may they not for party advantage arrest a party opponent, or refuse to arrest a criminal party associate? Thus our party police system may almost be said to suggest and justify the worst practices incident to our police degradation.

7. It seems impossible to acquit parties of a deliberate purpose to create — through the bi-partisan system — a monopoly of police patronage and power for themselves, and to exclude from the police service that class of independent, non-partisan, and conscientious citizens who are really most fit for it. Even in Massachusetts, in which the spoils system has been less despotic than in most states, the police laws disclose this purpose. For example, the laws relating to the cities of Boston and Fall River use this language, "The governor, with the advice of the council, shall appoint *from the two principal political parties* three legal voters who shall constitute the board of police for said city. . . ."[2]

The commissioners composing this Board make all appointments to the police force, all removals from it, and

[1] We hardly need say that we have been speaking of the party police system as unaffected by the civil service examinations, which in several cities have put considerable checks upon the evils we have characterized.

[2] Mass. Laws, 1885, Ch. 323; Laws, 1894, Ch. 351.

control the whole police administration. They naturally conform to the despotic party test thus imposed on the governor. As the party in power in the state selects two commissioners from its own ranks, and allows only one to the other, the hope of gaining the larger share of this vicious patronage, under such a law, is a constant stimulus to ignoble and degrading party contention and proscription. What moral right has the noble state of Massachusetts — what legal right compatible with justice or the welfare of her citizens — to thus establish a party test for the police service — to say that no man shall be a police commissioner — or by implication a policeman — unless he is a member of one of her "two principal political parties"? Why not as justly enforce the same test for entering the army or the militia?[1]

8. A recent law of New York still more strikingly illustrates both the aim of bi-partisan commissions, and the capacity of her party leaders for using them for despotic and illegal purposes.[2] The law creates a police commission for the city of Albany. Every public interest and duty of justice and patriotism required that the police force, at the state capital, should be as independent as possible of mere partisan politics. The law provides for a police commission to consist of four members, only two of whom are to be members of the same political party. They are to be elected by the common council of Albany. No member of this body can vote for more than two of them. Neither the mayor nor the governor are to have anything to do with the matter. The commissioners are not to be classified, and hence will all go out of office at once. Their terms are only two years, and there will, therefore, be a partisan battle over the police force every alternate year. The classified, five-year terms of the police commissioners for Boston apparently give more stability to police administration and put more restraints upon vicious party strife than the legislators at Albany desired.

[1] The case of *Rathbone* v. *Wirth*, etc., 150 N. Y. Rep., 459, suggests that the constitutionality of these Massachusetts laws is hardly more defensible than their policy. This party test for her police force seems utterly incompatible with her civil service reform laws.

[2] N. Y. Laws, 1896, Ch. 427, Sec. 3.

They obviously wanted a party contest and a new party deal every two years — thus insuring a rapid succession of partisan commissioners and servile party henchmen on the police force. To further make sure of this, they put these unprecedented and disgraceful words into the law, "No person is eligible to the office of police commissioner unless, at the time of his election, he is a member of the political party or organization[1] having the highest or the next highest representation in the common council."

Thus all citizens of Albany not belonging to one of the two favored parties or factions — no matter how superior their qualifications for a police commissioner — are declared ineligible, are practically branded as incompetent, for the office. Party and faction monopoly is encouraged by law — by a law which, in substance, says to every resident of the state capital, "If you would be a police commissioner, — practically if you would be a policeman, — be servile to the parties and factions in majority in the city council; make it plain to them that as a policeman you would use your power to increase their votes, fill their treasuries, and screen their frauds — at whatever cost to the people." It tells the people that the good policeman is not the officer who treats all citizens fairly and alike, but is he who discriminates for party advantage; that the police force at the state capital should be composed exclusively of such expert, unscrupulous politicians and partisans as commissioners thus selected will be sure to place upon it. It is not too much to say that this law dishonored the political civilization of the state of New York — that it is fit only for a half-civilized city or a mediæval age. It will stand on the statute book both as an ominous warning and an infamous avowal of the motives and purposes of those besotted partisans who are incompetent to deal with our municipal affairs in reference to the public interest but constantly seek to prostitute municipal power for personal and party advantage.

[1] The use of the word "organization" makes it possible for mere factions to claim the right to have two police commissioners, thus stimulating and rewarding the growth of patronage-mongering factions to the utmost.

But, happily, as these pages are being written,[1] the highest court of the state of New York has declared the law unconstitutional and void, because it brands every other citizen, except those who are members of the two parties, as ineligible to hold the office of police commissioner, curtails the constitutional right of Home Rule, sets up illegal party tests for office, and violates "the fundamental principles of free governments."[2]

II

1. The question whether police commissioners and policemen should be regarded as municipal officers or as state officers, has both a theoretical and a practical importance. If we concede their functions to be wholly municipal, the state should not interfere with their exercise. But, if they are in part state functions, then the state has a constant duty as to their performance. In a mere technical sense, the language of the state constitution and laws may decide this question — as it does in the state of New York — by classing them as municipal officers. But in several states police commissioners are appointed as state officers, and have been adjudged to be such by the courts.[3]

It will be useful to inquire how far, in point of fact, the functions of such officers are merely municipal. The residents of cities have certainly the most direct interest in that part of the police administration which consists in promoting civic convenience and in enforcing city ordinances. It is just and wise, as well as in the spirit of American constitutions, to allow city residents large powers over the selection and control of police officers. But these residents are far from being the only persons interested in the functions referred to, and city functions are by no means the most important which policemen have to perform.

[1] October, 1896.

[2] See *Rathbone* v. *Wirth*, etc., 150 N. Y. Rep., 459. There are laws in several states which the reasoning of this decision condemns as unconstitutional.

[3] Professor Goodnow has referred to the conflicting cases on the subject, and has clearly stated the legal principles involved. *Mun. Home Rule*, pp. 133–141, 239, 240; *Pol. Sci. Quarterly*, March, 1896, p. 16.

Policemen are representatives of the state for the enforcement of her general laws and for the protection of all her citizens. We have contrasted the great mass and variety of the state laws of paramount importance — all those relating to religion, to liberty, to social and family relations, to justice, to the rights of persons and property, to corporations, to land titles, to commerce, to international relations, to crimes which have a common application to the city and the country — with the limited laws and ordinances which are especially provided for municipalities.[1] The state provides for punishing those guilty of all the highest crimes, and they apply alike to the city and the country. It has a duty to make them uniform, and to see that they are uniformly enforced, whether in municipalities or country districts. Policemen act for the state in the enforcement of these laws, and no city has a legal right — or should be conceded to have a moral right — to control the policy of the state, or to interfere with the duty of police officers, in regard to the execution of general laws. If a city should resist the state as to these matters, it would be the duty of the latter to appeal to military force ; and it may invoke even the aid of the national government.[2] If these statements are the merest truisms, it is the false and pernicious claims made in the name of absolute Home Rule which makes them necessary.

2. In respect to the enforcement of general laws, policemen are, in a legal sense, executive officers of the state, and have a duty to consider its aggregate interests. So profound is the interest of the rural residents of a state in having good police administration in its cities, that they would be wise to pay its whole cost if the cities could not be compelled to do so.

All the reasons which require that the laws on the great subjects referred to should be the same in the country and in the city — and be uniformly interpreted by the courts — also require that they should be uniformly executed by policemen.

[1] See Ch. II. pp. 32–35.

[2] The state of New York called out the militia to bring Mayor Wood of New York City to obedience, when he used the city police to resist a police law of 1857.

This should be done under a pervading sense of duty to serve the state supremely, and not merely a particular city or village. Police officers should be taught to recognize the paramount authority of the state, and to regard their obligations to it and its whole people as superior to the duty they owe to any local division of either. A city policeman has no more right to execute the laws, than a city judge has to construe them, for the special advantage of his city.

We must make the state worthy of its ideal and competent for its duties. We must not rebel against its essential power merely because our vicious party methods and our neglect of our civic duties have degraded it in our estimation. To teach policemen that they are mere city officials having a right to take sides with the city against the state, or to consider themselves as the representatives of a mayor or of a city party, is unjustifiable, false, and demoralizing; and so it is also to cause them to think that they may act on the theory that the interests of the state and those of its cities are hostile, or on the assumption that the state alone is responsible for bad city administration. False teaching on these points has done much to cause the police force of American cities to become the active and corrupt agents of city parties and bosses.

III

1. Another view of the relations of the state to the police force of cities must not be overlooked. The duties and the cost of the city police are much greater by reason of the immense amounts of property and the vast numbers of people from the rural parts of the state which it must guard. This cost in many cities is much greater by reason of their commercial relations. It seems reasonable that the state itself should pay some part of this increased cost. Is it not also a duty of the state to bear some part of the expense of supporting policemen who, as we have seen, act largely as agents and officers of the state itself? The older nations have recognized and discharged such a duty. Eng-

land pays about one-half of the expense of supporting the municipal force within her cities.[1] France seems to contribute about one-third of the cost of her local police force, and Germany a still larger proportion. It is quite likely that, in Germany and France in earlier times, this practice was connected with a purpose of using the force for dynastic ends. Such, of course, cannot now be the case in France; and in England this payment is in no wise connected with any party or class interests, or any purpose of centralizing power, but is based on considerations of justice and sound policy which are as applicable in the United States as in England.

We have shown that the cities of England have a much larger liberty than those of the United States to select and manage their police force in reference to the municipal welfare, unrestrained by party action or special laws.[2]

2. Whatever may be the conclusion as to the justice and wisdom of the state paying a portion of the cost of the city police, there can be no doubt that the conditions attached to such payments, especially in England, have been highly salutary. The English government not only requires reports from cities concerning their police force, but causes it to be inspected by national officials, and insists on its coming up to required standards before such payments are made toward its cost. This practice by bringing into comparison the relative cost, discipline, and efficiency of the police forces of different cities, and by promoting salutary rivalry between them, greatly aids good administration. It also facilitates the exposure of irregularities, neglects, and extravagance.

[1] Shaw's *Mun. Gov. G. B.*, pp. 67, 111.

[2] See Ch. XII. on this subject. The policemen of London are selected and controlled by a department of the national government, but by methods which exclude discrimination on party grounds. It is not thought wise to commit the great departments of the nation — its records and treasury — to the protection of police officers selected by a single city. The possible moods and ambition of the population of a vast metropolis must be considered. The framers of our national government seem to have reasoned in the same way when they gave Congress the exclusive power to make laws and to provide officers for the federal district of Columbia. The police force of the city of Washington is in the charge of commissioners selected by the President. The nation pays half its cost.

Such inspection no more impairs the useful independence of the police in the control of cities than our state inspection of banks, insurance companies, and schools by state officers impairs the just independence of those institutions. We cannot doubt that if the state were to pay a portion, even if no more than five per cent, of the cost of the police of its cities, on the condition of their discipline and economy coming up to a high standard, a great public gain would ensue.[1]

3. The police experience of Great Britain deserves our thoughtful attention in some other particulars. The earliest advance of importance in police management in this country — that made in New York City soon after 1857 — was in the main based on the police methods then enforced in London. Since that time these methods — made more and more independent of party politics and in various ways greatly improved in England — have in the United States continued largely under the control of parties. In recent years the police force of American cities has been more and more regulated by numerous special laws, — often restrictive of true Home Rule, and not infrequently intended for party advantage, — while in Great Britain the sphere and liberty of Home Rule have been enlarged, and the police laws — a sort of police code — have been made generally applicable

[1] The state of Massachusetts, often in the lead of wise legislation, has much improved its school administration by applying the principle here commended, — that of the state making contributions to the expenses of local schools only when they come up to certain conditions laid down by the state. But the state has gone yet further, in the spirit of the suggestion made in the text, as to the police, — not so much by the way of the use of the police officers of one place in others where they may be needed, as in the way of creating a small number of state policemen who may be ordered, by the proper state officers, to any place where they may be needed in a crisis. This small body of state officers has been found highly useful, especially where local feeling has been aroused and violence or riots have been threatened. Yet such a duplicate police force seems hardly necessary, and might be embarrassing. The method to be proposed in this chapter of transferring policemen from one place to another would seem to put a much larger number at the command of the state in exigencies when they may be greatly needed. Whitten's *Public Administration in Mass.*, pp. 29, 30, and 80-93. Mr. Conkling has been impressed with the advantages of state inspection, for which he thinks American states should provide. *City Gov.*, p. 83.

to all cities, save in so far as London is in some measure an exception.[1]

4. The kind of state inspection which the police of American cities need could perhaps be made under a single state officer, who should be an experienced ex-police official, and be connected with one of the state departments or with a new municipal bureau in the state government. He should be required from time to time to examine into the condition of the local police administrations in the state, to receive and preserve reports to be made by them, and to annually lay before the governor and the legislature a general exposition and comparative report of the police administration in each city, setting forth all the facts necessary for a judgment concerning both their actual and their comparative merits and cost.[2]

Such a bureau or department would be able to supply the facts needed for enlightened legislation on police and other municipal affairs. It would be an admonition to corrupt and partisan city officials. Its action would not diminish the sphere or the liberty for Home Rule, save of that corrupt, partisan kind which fears publicity. On the contrary, much larger powers for local control could be safely intrusted to cities under such guarantees for their legitimate exercise. Tammany and every other party machine and its boss would of course be the inveterate enemies of such a system.

[1] See Ch. XII. Few matters in our city affairs more strikingly illustrate our neglect than the fact that, while so much has been said of late about police abuses, no state or city of the Union — and no reform organization so far as we know — has brought to the attention of the American people that admirable English police system upon which nearly all that is good in our own is based, and which can still teach us valuable lessons. If a tenth part as much money and effort had been used by our governments, or by our rich men, to teach the American people these lessons, as has been used by these men and our sporting classes to introduce English methods of rowing and golf playing, English breeds of cattle and hogs, and English aristocratic fashions and forms, our municipal debasement might not now so much disgrace us.

[2] The two New York state commissions, to which we have referred, for preparing charters for second and third class cities united — largely we believe by reason of the efforts of Hon. F. W. Holls — in presenting to the legislature of New York in 1896 a bill providing for a state municipal bureau.

IV

1. The time is probably near at hand when, in parts of the densely populated states, policemen will be required outside of cities — as they now are in European countries. It would result in embarrassing complications and needless expense to have distinct police forces, subject to diverse control, for each city soon to be developed along our railroads and waterways. It will be necessary to have considerable districts under uniform police laws and administration, or else to adopt some plan analogous to the European police systems. The police is soon to become a far more important force than it has yet been.

It is desirable to maintain that principle of local independence which is fundamental under American government, yet it cannot be too emphatically stated that provisions must soon be made for uniform police administration and comparative statements of its cost throughout the state. There can be no doubt that the failure to make the state inspections of the police which we need, greatly facilitated the bold malversations and corruptions recently disclosed in the police force of New York City. Why should not the state inspect and investigate the police as well as the militia?

We have seen that the constitution and laws of New York and of other states provide not only for examinations by state officers of banks, trust companies, and insurance companies, but of prisons, schools, and asylums, and require reports from their managers to state departments. Even the quality of butter, gas, and milk must be thus inspected. Is it needful for the state to thus deal with these relatively private interests, and not needful for it to take equal care as to the use of the mighty police authority on the exercise of which the prosperity and safety of the great cities largely depend?

2. Another matter bearing upon the wisdom and justice of the state paying a portion of the cost of police administration deserves notice. Is it too much to hope that in no remote future the state will — with the cheerful consent of

cities and districts — draw together detachments from their police forces for the prompt suppression of riots, mobs, and other local disturbances — a service for which policemen would be peculiarly well qualified — instead of being always compelled to rely solely upon the slow, less competent, more expensive, more unmanageable, yet far less prompt and effective — force of the militia? Properly disciplined policemen have all the military drill needed for such a duty, and are more likely than the militia to be discreet and just. They would arouse far less dangerous passions.

American states, being without a regular army, have more need than European nations for such a service at the hands of the police. New York City sent policemen in aid of the army during the Civil War. A moderate payment by the state toward the cost of the local police would be a just basis for invoking its aid, not only in the cases suggested, but in any cases where a great crime has been committed, or serious disorder or danger is threatened, especially where there are no local policemen.[1] Who can doubt that the discharge of such functions would dignify the police force in its own estimation, and cause it to be more highly respected by the people?

V

1. Most of the reasons we have given in the last chapter for a uniform code of health laws for the state also require a uniform code of police laws applicable, with proper adaptations, to all its cities and villages. This code would supersede our multifarious and conflicting police laws, and would save much needless litigation. Much partisan scheming and corruption would be prevented. The keeping of comparable and highly useful accounts and statistics would be made possible. A great amount of painful uncertainty

[1] Who that has seen firemen from one city rushing to the rescue of another can fail to see how salutary would be a provision, in the state police and firemen's code, which would bring to the rescue of a city or village in the hands of a mob or in flames some of the policemen of neighboring cities — bring them there in less time than the unskilled militiamen could be got ready for a start?

would be avoided. Every decision of the courts would interpret the police law for every municipality.

Accounts and statistics, even if adequately kept for any purpose, are generally according to different methods in different cities which make them of little value either for showing comparative cost or abuses.[1]

2. We cannot enter into details, but these general provisions in a state police code seem desirable: (1) it should determine all the questions we have considered concerning police administration; (2) it should supersede all other laws on the subject; (3) it should provide for the fixing of the salaries of the members of the force by the city councils, (4) it should forbid these members from applying to the governor or legislature on the subject of salaries; (5) it should provide for the keeping of police accounts, expenses, statistics of crime, in every city and police jurisdiction, in such a full, clear, and uniform manner, and for the making of such reports to the state concerning the same, as will make it easy to compare the police administration in each city and district with that of every other; (6) it should confer upon the councils of cities such general powers as they may require in connection with the framing and enforcing of the rules and regulations needed for carrying the provisions of the code into effect;[2] (7) it should make it a criminal offence to apply any party or sectarian tests for the selection of any person for examination for the police service; or to appoint, promote, remove, or degrade any one in this service for any sectarian or partisan purpose; (8) it should prohibit any member of the police force accepting a nomination for a political office; being a member of any political club, caucus, or convention; engaging in the public discussion of party issues; paying or having any part in collecting political as-

[1] When the United States needed systematic provisions for the government of its armies, it employed, not semi-military politicians or mere partisans, but the celebrated Dr. Francis Lieber, to draft them, and the invaluable Articles of War were the result.

[2] Such provisions would profoundly affect city morals, politics, safety, and comfort. Those for New York City (1896) — defective and inadequate as they were — are 528 in number and fill a considerable volume.

sessments; or acting as a representative, agent, or manager of any political party or faction or candidate.[1]

3. If the police force in American cities were really non-partisan, and were managed only in the public interests, its partly superannuated and partially disabled members — instead of being frequently retired to pensioned idleness for partisan and other indefensible reasons — would, as a rule, be given preference — perhaps with reduced salaries — for various positions in which their experience and character would be valuable — such, for example, as those of court officers, doorkeepers, parkkeepers, and custodians, which are easy and honorable. Under our party system these places are quite generally given to the favorites and electioneering henchmen of great politicians, officials, and party managers, for whom they often act the part of feudal vassals. The whole matter of retiring allowances for our disabled and superannuated policemen, firemen, and some other officers needs attention, and should be placed upon a more just and economical basis. The experience of the older nations on this subject is highly instructive, and deserves the study of American legislators. We may, perhaps, provide these allowances without much — if at all — increasing the cost, though adding to the efficiency, of the public service.[2]

VI

1. The question whether there should be a single head of the police force deserves some further notice. There has apparently been much confusion from the lack of a definite conception of what is meant by the "head of the force." It seems as if the acceptance of the unfortunate doctrine of

[1] See *Boston Ordinances*, p. 173. The New York rules referred to forbid members of the "police force" being members of any political convention for making nomination to any political offices; but they do not forbid the bi-partisan commissioners, who control the police force, being themselves scandalous party leaders, who shamelessly engage in prostituting their official power for party purposes, even causing the police force itself to become a mere partisan body under their leadership.

[2] See Eaton's *Civil Service in Great Britain*, pp. 130, 141, 142, 215.

an autocratic mayor had impaired the capacity to reason soundly on other municipal subjects. Many people seem to have no definite conception of what they mean by "a single head of the police."

A single police superintendent, — or executive officer, — like a single general for an army in the field, is needed for direct command and the carrying of orders into effect. But who is to originate and guide the policy in which orders have their origin? Who is to hold individual commanders responsible for the proper execution of this policy and the orders? Is the superintendent really the paramount head of the force, under obligation to no local authority? Is he, like the mayor, to be an autocrat, directly responsible to the legislature and the state? The president is commander-in-chief of the army, to whom each general is responsible; but the president is largely responsible to Congress, which controls the expenditures and — in the main — the national policy. Congress can, in substance, impeach and try the president. The champions of an autocratic chief of police seem to insist that he is to act directly under the police laws, as he may interpret them, and that there is to be no superior police authority in the city which shall have power for directing his general management, or calling him to account. Consequently, they must hold — if he is not to be an absolute despot — that in every difficulty and in reference to every question the appeal must be to the legislature or to the governor. This is repugnant to all sound theories of Home Rule, and would be fatal to reasonable municipal independence. Numerous special statutes, state-party domination, and constant state intermeddling in city affairs would be made inevitable.

If the ideal head of the police is not to be a despot so far as the city is concerned, or directly and solely responsible to the state, he must be responsible to some other city authority. What authority is it to be? We have shown why it should be the council, and not the mayor. The council would exercise its paramount authority mainly through its deliberately made ordinances — in conformity to the police code.

The council would have a standing committee on the police department, which would keep it constantly informed as to the manner in which the police superintendent discharges his functions. The council could compel him to submit to investigations, and there should be provisions for his trial in the nature of a court martial in the army.[1]

In a certain sense this theory of the matter would provide for a single head of the police force for direct command, yet to regard him as such, in a literal sense, is a superficial, vicious, and misleading view of the subject.[2]

2. The moment we supersede commissions, and refuse to create autocratic mayors, the need of a local police authority to discharge various police duties, and especially to hold our single police superintendent, or commander in the field, to an essential responsibility, is both apparent and imperative. Who is to appoint him? Who is to remove him? Who is to investigate his official conduct? Who is to call him to account for the neglect of his duty, or the usurpation of power? Who is to define the duties of the various grades of police officials? Who is to frame the police ordinances? Who is to hold the vast number of trials of delinquent policemen whom the superintendent must present for judgment?[3]

[1] It might be provided that this police court martial, in cases of important charges against the police superintendent, could be held before a judge, aided by expert police officers, the trial taking place after the standing committee of the council had considered the charges. There could be effective provisions for causing these investigations and trials to be promptly conducted. The council might be authorized to thereafter remove the head of the police by a three-fourths vote, or the mayor might be authorized to remove him, provided the council did not by a three-fourths vote nullify the removal within five days. We think these methods would be preferable to political removals by mayors or governors, and far more prompt than court trials for making such removals.

[2] So long as police power is vested in a commission, it is inevitable that the superintendent of police should be its subordinate. It has generally been the antagonisms of bi-partisan commissioners which have prevented his being allowed adequate authority, though it is a curious fact that the most scandalous case of conflict of police authority under commissions — that in New York City in 1897 — was one in which one democrat and one republican commissioner generally acted together against the two other commissioners, one of them a democrat and the other a republican.

[3] The police force of New York City, even before the Greater New York was

In view of the facts stated in the note shall the superintendent be not only the complainant, but the judge and the executioner in all cases of police offences? Who is to administer the police pension fund — the police pension system being one of great complication? Who is to fix the salaries of the police officers? Who is to prescribe the general policy of the police department? Who is to determine the grade of punishment for the malfeasances of policemen? Who is to regulate superannuation allowances? Who is to purchase the police supplies? Who is to build the police station-houses? Who is to determine the amount of police expenditures, and audit the vast accounts of the police department? Is the head of the police to do all this? Is he alone to make the police reports to the state concerning his own doings?

If we are not to constantly appeal to the legislature as to all these matters, is not a local authority superior in many matters to the single, technical commander of the police force — and having a large discretionary authority — plainly indispensable? We can no more endure an autocratic police superintendent than we can an autocratic mayor. Can there be any more fit authority for such purposes than such a continuous council as we have described, before which all these matters can be discussed, and by which authoritative and intelligent decisions can be made?

created, contained five thousand policemen. There were each week about one hundred delinquents, or offenders,— more than five thousand a year,— against law, or police rules, who had to be tried by the police commissioners, each taking his turn at the trials. These trials afford dangerous opportunities for both personal and partisan favoritism, and many of them require a clear comprehension of legal principles. A consistent and systematic enforcement of justice and the police regulations are essential to good police administration. The whole time of a commissioner would not be sufficient for conducting these trials, even if it were safe to trust one of the commissioners — who are selected as party representatives — with the sole power of exercising such judicial functions. A police-trial justice, having a stable tenure of office, and skilled in the law, should always sit with a commissioner, and there should be an appeal to another trial — when they fail to agree — at which an additional commissioner should sit. Not only might expensive and embarrassing reversals by the courts, of judgments on police trials, be thus avoided, but much injustice to policemen might be prevented. Of course the mere party managers would object to so just a system, which would greatly diminish their chance for spoils.

We can no more endure a police boss than we can endure a party boss or a mayoralty despot. We must have a city council competent for the management of our city affairs or we must hand them over to the state — and surrender all hopes of true Home Rule, and non-partisan city government.

Since this chapter was in print, a scheme for a *state*-police system has been presented in the legislature of New York, which we have considered in the APPENDIX.

CHAPTER XVII. — CONCERNING JUDICIAL ADMINISTRATION IN MUNICIPALITIES

The original constitutions provided for appointing judicial officers. The causes which have made them elective. The vicious New York Council of Appointment developed a spoils system which led to short judicial terms. The New York constitution of 1846 made a revolution in favor of judicial elections. Why this constitution was soon condemned. Longer terms and more appointments demanded and secured. Partisan New York City justices in 1870. Their vast and vicious power. Justices made appointive for terms of ten years in 1873. Great improvement the result. But mayor's use of appointing power degraded the justice courts. Their prostitution for party advantage. New York constitution of 1894 allows justices to be appointed and the courts to remove them. Why the courts should appoint as well as remove justices. Why such appointments would give better justices. The other officers to which this reasoning extends. Precedents for judges appointing justices, etc. United States Commissioners have shown the advantages of such appointments. A method of avoiding the only objection to judges making appointments. How to select the appointing judges by lot. Regulations for making these appointments. Effects of such appointments upon the Bar. Whether there are any good objections to the lot for this purpose. Probable effects of judges appointing district attorneys, sheriffs, coroners, county clerks, and registers. The grave need of longer terms of office and of fewer judicial elections. Vicious New York laws of 1895 and 1896 for increasing such elections considered. Appointments and a firmer tenure of office an essential part of municipal reform. The objection that we would allow too few elections answered.

THE original state constitutions provide that judges and judicial officers, generally, shall be appointed. The theory of an appointed judiciary is broadly embodied in the constitution of the United States, which declares that the president shall nominate the judges subject to confirmation by the Senate; and such, with infinite advantage to the nation, has been the constant practice. It is hardly imaginable that the Supreme Court of the United States, or even the federal Circuit and District Courts, could have so nobly discharged their functions had their members been elected by popular vote. No statesman could see these judicial officers made thus elective without grave anxiety for the safety of the nation. The method of choosing judicial officers by appointment has been continued in Massachusetts, where the admin-

istration of justice has been of the highest order; but, in most of the states, the excessive development of party power has been a chief cause of these officers being made elective by the people.[1]

The causes of the abandonment of judicial appointments in most of the states, and their results, have an important bearing upon the suggestions we are about to make, but we have space for explaining them only in reference to a single state, and no state is so rich in instructive facts as New York.

Unfortunately her first constitution conferred the appointing power jointly upon the governor and certain senators — together constituting "the Council of Appointment," which soon degenerated into a partisan body, that helped to develop an original American spoils system. A natural result was that the New York amended constitution of 1821 provided that the special and assistant justices of New York City — together having the powers of justices of peace — should be appointed by its common council — these justices as well as the judges having been before appointed by the Council of Appointment. This spoils system and the partisan exercise of the appointing power naturally enough caused great dissatisfaction among the people.

2. As a natural outcome of the situation, the constitution of 1846 made state and county judges as well as all judicial officers for municipalities for the first time elective. The state was divided into eight judicial districts for electing the judges of the two highest courts for terms of only eight years. The counties were respectively authorized to elect county judges for a term of only four years. Sheriffs and clerks of counties were made elective as the legislature should direct. The dominant party was therefore enabled to cause city officers to be elected from its own ranks in very small districts and for very short terms.

Here was a great revolution, which divided, localized, and

[1] The first constitutions of New York and Maryland, like that of Massachusetts, made justices as well as judges appointive by the governor and council, but that of Pennsylvania allowed the voters of cities to vote for a considerable number of persons for justices, from among whom the governor (called president) and the council made the appointments.

enfeebled the judiciary — practically declaring it could fitly be made dependent upon party majorities and that its officers could be properly made the prizes of local party victories. The great parties, under this system, speedily become more and more centralized and despotic, dominating local elections and enforcing party tests for judicial offices.

Party managers and professional politicians naturally favored this great increase of the number of elections. State after state imitated this new elective system of New York.

3. It was, however, soon perceived that these numerous elections, short terms, small districts, and partisan tests had introduced a new class of evils into both city and state politics, making parties more despotic and the judiciary less independent, capable, and trustworthy. Especially minor judicial officers in cities became more servile to party managers, and more corrupt.

As a natural consequence, a reactionary movement soon began. A significant result of this appears in the amended New York constitution of 1870, which, with certain exceptions, provides that judicial officers in cities may be either elected or appointed — a provision reaffirmed in the amended constitution of 1894. Several of the authors of this small-district, short-term, elective judiciary system of 1846 lived to see their eight state judicial districts reduced to four, their eight-year terms for judges extended to fourteen years, and the New York City police justices, whom they had made elective for brief terms, again made appointive, in 1873, for a term of ten years.

4. A consideration of some of the reasons which caused this reaction and compelled these extensions of terms will lead to — and we hope will, in the reader's view, justify — the novel suggestions with which we shall conclude this chapter.

The degradation of the higher courts in the city of New York, which was a natural consequence of the popular election of judges for short terms of office, — as disclosed by the investigations of 1870, which led to the impeachment and removal of the notorious Judge Barnard, and to the resigna-

tions of other judges to escape a like fate, — is too well known to require further notice. The city-party managers at that time — of whom the notorious Tweed was the boss — and the judicial officers of lower grades were quite as corrupt as those judges. In fact, the evils of the elective system for choosing judicial officers have been even greater in the lower courts — and in connection with marshals, constables, coroners, and sheriffs — than in the choice of judges. For, in the elections of these minor officers, the higher public opinion has been little felt, and the better class of citizens have taken little part, while the criminal, immoral, and mercenary classes — most directly affected by the action of the criminal courts and officers — have been both active and potential. An election of judges arrests the attention of the public press, and seems to involve the safety of property — thus inviting to the polls citizens who habitually neglect the elections of the justices.

5. In 1870 there were technically no justices of the peace in New York City, the civil jurisdiction of these officers belonging to the district court justices, and their criminal jurisdiction to the police justices. There were eight separate districts in the city for the election of these justices, one of each class being elective from each district for the term of four years. It will be seen, therefore, that this elective system for these justices alone *required the holding*, on an average, of four judicial *elections every year — about the equivalent of one every ninety days*. For making the nominations and managing the elections of so many candidates, the whole corrupt party machinery — controlled by unscrupulous party leaders and bosses — was put in motion, and caused almost constant manipulation, bribery, and corruption. The vilest voters supported the basest candidates. Both classes of these justices were regarded by the party managers as among the most effective forces for carrying elections. Their judicial powers were habitually prostituted for party ends.

It is almost too obvious for mention that such frequent elections greatly increased the despotic and corrupt power of

party managers, brought great sums of money into the party treasuries, made the trade of city politics profitable, and disgusted, repelled, and fatigued the most competent voters. These elections gave ignorant and unscrupulous politicians seats in the justice courts — in fact, hardly allowing any well-educated and competent men of independence places there. Hardly one in four of the police justices were then lawyers at all, but most of them were expert and unscrupulous politicians and partisans, lamentably ignorant of the law they were to administer.

The inevitable results were a steady degeneration of these courts, the loss of public confidence in them, the criminal class greatly emboldened, lamentable and manifold injustices to such of the poor and humble as had no party influence behind them. Every man who aspired to a seat as a police justice saw the need not so much of standing well with the judges or the better class of voters, as of conciliating the politicians, and of convincing the grog-shop keepers, the gamblers, the bawdy-house keepers, and all the criminal and immoral classes, that they had little to fear from him if made a magistrate.

6. These officers preside at the gates of primary justice, interpret to the common people the spirit of the law and the moral tone of the government — thus doing much to form their opinion of both. As many as seventy-five thousand persons were annually, at that period, brought under arrest before the police justices to be dealt with largely in their discretion. The enormous amount of wrong annually done — or allowed — in the name of justices by those partisan and incompetent officials, and the corrupting influence they had on city politics, were appalling to contemplate. No adequate conception of the grave problem of municipal government in American cities is possible without a careful study of the ominous facts connected with the neglects and the doings of their lower courts.

7. An adequate municipal reform is impossible in the United States until these courts have been made independent of party politics. There never has been — and we think

there never can be — a well-governed city in which its justices are elected for short terms by a popular vote.[1] There were small chances of removing even the worst justices; for the dominant party which elected them gains most by their malversations and their electioneering activity. Thoughtful men read with anxiety those pages of the history of the Italian republics which tell us how, in Florence under partisan judges chosen for short terms, the courts became so corrupt and despotic that the people would no longer allow any of their own fellow-citizens to sit in their seats of justice, but selected their judges and other judicial officers from some foreign state and brought them to Florence to hold her courts — as the only means of securing just decisions.

8. Such was the intolerable and ominous condition when, in 1873, a law was enacted providing for the appointment of the police justices by the mayor from the city at large, for a term of ten years, subject to confirmation by the aldermen. It made the justices removable by the judges of one of the city courts. Here was a condemnation of the little-district, short-term, party system, and the establishment of some new principles of great importance.[2]

The enforcement of this law resulted in a greatly improved administration in the police courts of New York City, so that when in 1895, after the reform sentiment had triumphed, there was a reorganization of the police courts, it was made under a law[3] which was in its main provisions little more than a reproduction of the law of 1873; except that the mayor — according to the unfortunate theory of making that

[1] Ex-Mayor Hewitt of New York, in his message of Jan. 7, 1888, truly declared that the position of a police justice "is more important to the community than that of a judge of the Court of Appeals" — the highest court of the state. He declares the exercise of the power of these justices to "oblige political friends" to be dangerous, and says he cannot express his indignation at cases of its exercise when he was mayor.

[2] Law 1873, Ch. 538. As the draft of this law — as presented to the legislature — was made by the writer, he is able to say that it required that police justices should be lawyers who had practised their profession for at least five years, and the confirmation of their nominations to be made by a court instead of the aldermen. But as these provisions would curtail party power, the politicians caused them to be stricken from the bill.

[3] Ch. 601 of Laws 1895.

officer autocratic which then prevailed — was given an absolute power of appointing the justices.[1] This salutary provision for the removal of minor judicial officers for cause and *by the higher courts* — first giving them an opportunity to be heard in self-defence — was affirmed by the amended New York constitution of 1894, which says that such removal shall be made "by such courts as are, or may be, prescribed by law," and the authority for appointing judicial officers in cities was at the same time enlarged.[2]

II

1. Despite the great advantages of being relieved, by the law of 1873, of small districts, short terms of office, and the degrading influence of popular elections for police justices, the vicious method of having these officers appointed by the mayor involved their selection in party politics.[3] Unscrupulous party managers, the criminal classes, and all those interested in unlawful kinds of business were quick to see how they could effectively condition their support of a candidate for the mayoralty upon his assurance that he would give them the kind of police justices they desired. They did so.[4]

2. It became clear, therefore, to all well-informed persons that the appointment of satisfactory police and other justices

[1] But the original principles in the draft of the law of 1873 giving a court the power of removal and requiring the justices to be lawyers were reaffirmed. But it is much to be regretted that the requirement of annual reports of criminal statistics, etc., from the police justices, which was contained in the law of 1873, and which resulted in placing useful information before the public was by apparent inadvertence omitted from the law of 1896. Yet the justices of the courts, under this law, have wisely and patriotically continued the reports.

[2] Art. 26, Sec. 17.

[3] It is but justice to Mayor Strong — who was not elected by a mere party vote — to say that the police justices he appointed were not all of one party, that they were lawyers of ability and good character, and that the police administration has been greatly improved by them.

[4] In the city of Brooklyn, — under the charter we have referred to, — apparently to get rid of such evils, the appointment of police justices was given to a board consisting of the mayor, comptroller, and auditor. But this board acted as a partisan body; it made spoils of the appointments, which its members seem to have apportioned among themselves.

could not be secured — save when some great reform movement should triumph — so long as they should be connected with contests for the mayoralty. Indeed, the very worst of these justices — even those whose indefensible appointment aroused the reform movement which elected Mayor Strong — were appointed by autocratic, party-elected mayors with the approval of their party.

Nevertheless, many good people still seem to think — as Tammany and the whole horde of mere politicians and partisans in both parties declare — that such mayors are an essential agency for achieving municipal reform.

3. We think it may be said that every mayor of New York, within the last fifteen years, — save Mayor Hewitt and Mayor Strong, — has used his power of appointing justices to aid his party.

Naturally enough, therefore, the state of New York has, of late, shown an increasing tendency in favor of vesting more control over the minor judicial officers in the higher courts. Her amended constitution of 1894 declares that "Justices of the peace and judges or justices of inferior courts not of record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard, *by such courts* as are or may be prescribed by law;" and the same section of the constitution further provides that all judicial officers in cities, "save justices of the peace and district court justices, whose choice is not otherwise provided for, may be *appointed* by some local city authority" — a provision equally significant both as favoring judicial appointments and as showing distrust of judicial elections. These provisions express a distrust of popular elections for choosing minor judicial officers; they in substance tell us that a court is less likely than a political officer, or a political body of any sort, to be influenced by party spirit in making such removals; they, in substance, say that mayors should not be allowed to be so autocratic as they have been in the judicial sphere — apparently taking notice of the facts that while mayors have appointed many bad justices they have never removed one of them, or even condemned their gross-

est malfeasance. They declare that courts are better qualified than executive officers to judge whether a justice ought to be removed.

4. It has doubtless occurred to the reader, while accepting these reasons in favor of the removals of inferior judicial officers, by the courts, that such reasons apply with equal force in favor of their appointment being also made by the courts. The duty of appointment and that of removal require the same qualifications and involve the same principles. It seems very clear that the higher courts are the most competent and independent authority for saying what lawyers are worthy to hold seats in the lower, whether the question arises in a case of an appointment or in a case of removal. The effect upon the court itself of exercising such a power would seem to be the same whether it relate to an appointment or a removal.

When the power of removing justices shall be vested in the courts — so that the politicians and bosses will no longer have a partisan interest in their having short terms — we may well believe that these terms will not be less than ten years, or, better still, that they will be during good behavior and continuing efficiency, of which the courts will be the judges. Then it will be seen that the question of removal and the question of appointment will, in most cases, be in substance the same, — being in fact only the question whether a particular person is fit to be a justice.

III

1. We have now reached the important and far-reaching question whether the justices and minor judicial officers should not be appointed by some of the higher courts. Several points bearing on the question are very clear.

(1) Many conservative persons will at first condemn such appointments simply by reason of their assumed novelty. (2) This opposition will be reënforced by the party managers, and the whole horde of politicians and spoilsmen who desire the patronage and profits of many judicial elections

in many little, judicial districts. (3) The criminal classes, the many corrupt interests which we have shown to be most active and effective in police justice elections, the unscrupulous party leaders, and all the vile voters they hustle and bribe to go to the polls will surely lament and bitterly oppose such appointments. (4) The managers of the partisan primaries for nominating inferior judicial officers would suffer a great loss of business and profits if these officers should be appointed by the higher courts.

2. On the other hand, there does not seem to be any interest of morality, of business, or of good administration which is likely to suffer from such appointments, unless it be by reason of their effect upon the courts which shall make them, — an important matter, which we shall not neglect. What other persons can be so competent as experienced judges to decide what lawyers are most fit to be made justices, or minor judges? Day by day in the courts they see what are the capacity, sense of justice, and the temper of the members of the Bar. Nor, apparently, can any person be more independent than the judges for making selections in the public interest rather than for party reasons.

If judges are most competent — as the state of New York has decided after various experiments — for making removals, why are they not for making appointments? Few men, we must think, capable of freeing themselves from party bias and traditional prepossessions, will claim that a party-elected, executive officer, whether mayor or any other, knowing little of judicial duties and of the capacity of lawyers for discharging them, is likely to select so fit persons for justices as could be — and probably would be — selected by superior court judges. All such judges — inasmuch as their labors are increased by the blunders and wrong-doing of ignorant and unfaithful justices — have a more direct interest than any other class of citizens in their competency and fidelity, and a more natural pride in having the judiciary in all its grades reputable and well qualified.

3. It seems almost too obvious for comment that, when appointed by a permanent, non-partisan court, the justices

themselves would be far more independent and courageous for the fit discharge of their duties, especially in dealing with bosses, politicians, grog-shop keepers, gamblers, and corrupt interests generally, than they would if they were appointed by mayors whom a party vote has elected for a term of only two or three years, — a vote which these classes greatly influence. These justices need to be independent and fearless enough to condemn the most desperate party bullies and electioneerers whom the worst mayoralty candidate may have employed to aid his own election. Think of having all of the criminal justices in a vast city the appointees of a partisan mayor, as might be the case now in the Greater New York if the Tammany mayor could remove as well as appoint them.

4. Who can fail to see that it would have a salutary effect upon the Bar to have all its members feel that if they would gain seats in the minor courts, the essential condition is not that they secure the favor of the supreme boss, of basest interests, or of the vilest voters, but that they command the confidence of the judges of the higher courts — in short, that they look up and not down for strength and promotion?[1]

It should be stated here that we are not speaking of police justices merely, but of civil justices, justices of the peace, and other officers more or less judicial — especially in municipalities.[2]

IV

1. Turning now to the question of precedent, we shall find the appointment of inferior judicial officers by the higher

[1] Ex-Mayor Hewitt of New York was so impressed with the superior fitness of the higher courts for choosing police justices, and the advantage of having them do so, that in his message of Jan. 17, 1888, he recommended that no one nominated for such justice be allowed to take office until a majority of the justices of the Supreme Court of the district should certify to his good standing and competency for the office.

[2] The same methods, which we shall explain, may, with some modifications, also be applied to the selection of city (and county) clerks, registers, and various other officers — such as sheriffs, district attorneys, coroners, and constables — connected with the administration of justice. Whether some of the judges of the inferior courts of record should be appointed in the same manner can be decided after adequate experience in a more limited sphere.

judges — or by the courts — to be by no means the novelty which some people seem to suppose. The constitution of the United States authorizes Congress to confer an appointing power upon the courts of law — a power which has been conferred and exercised, as we shall soon see, with salutary results from early days of the government. The power which state constitutions confer on the courts to appoint and remove the clerks and other officers who serve under them goes far toward being a precedent for extending this power to the appointment of justices; for justices must conform to the judgments of these courts, accept their construction of the law, and are, therefore, in an important sense their subordinates. It would obviously greatly tend to harmony and vigor in the whole judicial system, if the higher judicial officers should appoint the lower. Those who insist that the mayor should appoint all the lower executive officers in a city in order to secure harmony, ought to be able to see that harmony is at least as much needed in the judicial department as in the executive department.

We have seen that the reasons which make it proper for courts to remove justices and other minor judicial officers, in principle apply in favor of such courts appointing them — a view which the New York constitution of 1894 seems to approve. It is impossible to hold that to remove justices is a judicial function, but that to appoint them is not. It seems almost absurd to claim that a court competent for removing a justice is not competent to name his successor. There is something grotesque in insisting that the vacancy caused by the act of a court should fall to a partisan primary or a party-elected mayor to be filled.

V

1. The substance of the objections that can be made against appointments by the courts seems to be these: (1) that such appointments are not within the legitimate functions of such tribunals; (2) that they are contrary to American constitutional and republican principles and precedents; (3) that they would tend to involve the judges in

political contention, and to impair the independence of the courts; (4) that there is too much danger of vicious practical results following such appointments, to warrant even a trial of them.

Let us consider these objections. In the early development of governments the appointing power was a prerogative of kings, and extended to civil, military, and ecclesiastical affairs. He made appointments at pleasure, alike in the executive and judicial sphere — if we should not rather say these spheres were one and undivided. Many of his appointees — like the king himself — were both executive and judicial officers. One of the great advances of liberty and justice has consisted of the differentiation of the executive and judicial departments from each other — which no form of government so early and plainly declared, or so largely effected, as the constitution of the United States. Hence, we have so earnestly insisted that the creation of autocratic, or kingly, mayors is anti-republican and a retrogression toward despotic times and royal principles and methods.

2. When the framers of this constitution came to deal with the appointing power, they dissented widely from the autocratic and kingly theory on the subject. They required all the most important nominations to be made not "at pleasure," as under recent autocratic mayors, but subject to the confirmation of the Senate — a great limitation of executive power, and a great extension of legislative power. They further provided for limiting the old kingly power in two other important particulars. Congress was authorized to vest the appointment of such inferior officers as they should think proper, (1) in the heads of departments, and (2) in the "courts of law."[1] Here seems to be a decision of the main questions we are considering, — a decision by what we may fairly call the highest authority on the subject of republican principles — the constitution of the United States. It declares, in substance, that the appointment of *inferior judicial officers is not an executive function* fit for an executive officer to monopolize, but is a *judicial function fit for the*

[1] See U.S. Const., Art. 2, Sec. 2.

courts to possess and exercise. There were, before, no important precedents, save those of royalty, as to what power of appointment courts should have, or as to what functions are legitimately judicial. No precedent since is entitled to equal weight in a republic.

3. The authority to vest this appointing power in the national courts was exercised by Congress in the early days of the republic. Appointments under it have been made by the courts ever since, on a large scale and with admirable results. We have space for illustrations of these results only in regard to a single class of officers, but they are so exactly applicable and decisive as to be all we need. The United States commissioners, for acting as magistrates, who throughout the country are appointed by the Circuit Courts of the United States,[1] have not only, in substance, all the powers of both the police justices and justices of the peace, as connected with crime, but much larger and more varied powers than those officers possess. They exercise them in all the states and cities of the Union. They may cause offenders against the laws of the United States to be arrested, held to bail, and, in proper cases, imprisoned on their warrant — their power covering substantially the whole sphere of the primary judicial administration of the nation. The judicial appointment of these commissioners began soon after the organization of the government, and they have so well discharged their functions that their powers have been several times enlarged.[2] We are not aware that it has ever been even charged that the circuit judges, or district judges sitting in the circuits, have been less useful or trustworthy by reason of having this appointing power, or that any competent judges have thought it would be better to have these commissioners elected by popular vote or appointed by a mayor. On the contrary, the uniform intelligence, fidelity, and justice with which these commissioners, even in great cities, have discharged their manifold functions have been generally in such striking contrast

[1] The district judges of the United States were also early authorized to appoint very different classes of commissioners. *U. S. Laws*, 1794, Ch. 64.

[2] *U. S. Rev. Stat.*, pp. 627, 727, 1014, 1042.

with the doings of the elected, city justices as to make it a fit object of wonder that even party spirit could have caused our cities to continue their vicious methods.

We are unable to learn that within the more than three generations since there have been such commissioners at New York City there has been any noticeable case of malfeasance on the part of any one of them.[1] We cannot expect that these facts will much affect the party bosses and mercenary leaders who thrive on the prostitution of judicial power in American cities. But we may trust that they will make it clear to disinterested and patriotic minds what direction municipal reform should take in the judicial sphere. It seems to be about equally evident that to appoint minor judicial officers is a judicial function fit for courts to exercise, and that it is greatly in the public interest to have them do so. The vicious power of party machines and party managers would thereby be greatly diminished; many demoralizing and needless elections would be suppressed; the prostitution of criminal administration for party ends would be far more difficult.

VI

1. While it thus seems quite clear that a court may exercise an appointing power without damage to itself, and without impairing public confidence, it is obvious that such evils would be most likely to arise when the power is constantly

[1] A judge—Judge Brown of the United States District Court—who has for more than fifteen years been in the habit of sharing in the appointment of these commissioners, and of holding circuit courts in New York City, has declared in a letter to the author that there have not been any difficulties growing out of any of these appointments. He says, "I do not know of any instance in which any complaint of improper conduct has been made concerning any one of the commissioners."

Hon. Hoyt H. Wheeler, for many years the Judge of the United States District Court for Vermont, has kindly read this chapter. He has authorized the writer to say that he has found the appointment of commissioners by judges to be salutary, and that he thinks the method of appointment proposed in the text could have no injurious effect upon the judges who should make such appointments. It may be said that state judges, whose terms are not very long, would be more influenced than United States judges, by party interests. If this be in a strict sense true, we cannot think that influence would be at all important under conditions of making appointments we shall proceed to set forth.

vested in the same courts, and is to be so exercised that the office-seekers and party manipulators can at all times know what judges are to wield it, and consequently who can be most usefully solicited. It would, therefore, be a great gain if we can by some method — as by the lot, in a way analogous to the use of the lot in drawing of jurors — make it impossible to know in advance what judges will make the appointments.

Now, it is quite feasible to do this, and thus have the judges wholly unaffected until almost the hour of exercising the function of appointment. Difficulties which attend the drawing of jurors would not exist, for in drawing judges we know that every one is competent before he is drawn. No one can object to his serving on a Board of Judicial Appointment and Removal, nor can he decline to do so.[1]

2. The method we propose, taking New York City for an illustration, can be briefly stated. There are, we believe, twenty-two judges of the Supreme Court whose place of service is the City of New York, and their term of office is fourteen years. Whenever there is an occasion for making an appointment of a justice or for a removal, let the names of these judges[2] be placed in a box by the proper officer, — as the names of the jurymen would be before a trial in the ordinary course, — and from these names let the names of three judges be publicly drawn. The judges so selected are to constitute a Board of Judicial Appointment and Removal — for the occasion. Every new Board which may from time to time be required can be promptly selected in the same way. Every such Board should proceed, only in open public session, to hold its meetings; it should make the appointments or removals required with all practicable despatch.

There should be public records of its proceedings; all papers considered by the Board or any judge should be

[1] And here we may say that there is as much need for selecting judges by lot for making removals as there is for making appointments.

[2] The judges of any other convenient and appropriate court could be selected. They need not all be from the same court. Their number should be four or five times greater than the number of judges to be drawn.

treated as part thereof; the vote given by every judge on the Board should be shown in such records. The first meeting of the Board should be held within, say, five days or earlier after its creation, and its appointments should be completed within five days thereafter. Its formal certificate, signed by two or more of its members, should be effective as a valid appointment of the person therein named to the office therein designated. The Board should cease to exist upon the completion of the required appointments or removals.[1]

3. There seems to be no opportunity for any partisan, or other vicious, combination to be made effective for influencing the judges before their names are drawn for the Boards; and we are unable to see how the judges who may compose it can be in any way demoralized by the public discharge of functions so honorable, public, and responsible. Every judge in his ordinary experience is exposed to far greater temptations and intimidations — than would arise under these Boards — at the hands of desperate criminals, great politicians, and rich litigants before him — and so are jurymen. Cannot our judges be trusted to resist as much temptation as besets every man who serves on a jury? From the moment of the selection of the members of the Board, the scrutiny of the public press will be upon them. Unlike mayors, they can have no recent election pledges to redeem; and nothing but disgrace can be expected from infidelity in the choice of justices.

4. On the other hand, it seems probable that every lawyer who seeks a justiceship or other office through such a method of appointment, will feel the salutary need of showing a capacity and of establishing a reputation which the high officers of justice can approve and reward, instead of a need of winning the favor of corrupt interests or machine politicians. It is for the reader to decide whether justices thus appointed

[1] As most of the judges would have been elected several years before any one of them would be called to serve on such a Board, it cannot be said that their elections would be effected by such a possibility. Yet to exclude all possible influence of the kind, it may be provided that the name of no judge shall be placed in the box for the drawings who has not been at least one year in office, or whose official term — if he is eligible for a reëlection — will expire within one year.

are not likely to be far more independent for the fit discharge of their duties than justices who have gained their places through a primary nomination, the favor of a mayor, or the vote of a party.[1]

VII

1. It may be objected that the lot is too mechanical or undignified a proceeding for the use proposed; but let us

[1] There are various points of importance connected with these Boards which we have no space to consider save in a note. (1) The law should carefully define what judges or other officers or class of persons should be among those whose names should go into the box from which the drawings should be made. Their numbers should be obviously several times greater than the number to be drawn. The judges need not all be members of the same court or all be residents of the same district as the officer to be appointed or removed. It should be provided that no mere irregularity or matter of form should invalidate any proceeding, and perhaps that no proceedings should be taken to question the title of any officer so appointed after he has entered upon his office or after ten days succeeding his appointment; (2) five judges instead of three may be drawn for a Board, though we think it undesirable, as it would weaken the individual sense of responsibility; (3) in case of relatively unimportant appointments or removals — as of city constables and marshals — a single judge may be made the appointing power or a Board may be drawn from among the police justices; (4) in cases when certain officers not strictly, or in fact, judicial are to be appointed, — as, for example, sheriffs and county clerks, — a part of the members of the Board may be drawn from among the members of the city council who have been at least three years in office; (5) if it should be thought desirable, it would be possible to provide for stated sessions of such Boards; (6) perhaps for the choice of certain police officers or fire department officers, an appointing Board might be drawn by lot — wholly, or in part — from among the officers of those departments; (7) it is obvious that in the case of such officers as coroners and surgeons of police, a Board may be selected jointly from among members of the council, and from physicians serving public institutions; (8) it may be a question whether the Board should refuse to take notice of nominations for the offices they are to fill, or should, on the other hand, give an opportunity for a very brief hearing or statements in writing for and against the merits of the nominees. We think it should notice nominations, if the conditions of doing so shall be carefully defined, and provided the nominations are not made by or on behalf of any party. Nominations should be required to be made by certificates in writing substantially in the form suggested for free nominations in municipal elections. Final action should be taken on any nomination within three days after it is made. But the Boards should have a full authority to make appointments outside of any nominations; (9) all papers placed before the Board, or considered in reference to any appointment, should be regarded as public records; (10) every member of the Board should be required to vote on every nomination; (11) it should be understood that the prohibitions hereinbefore advised against making municipal appointments or removals for party reasons are applicable to those we are now considering.

not forget its glorious associations with justice and the courts wherever trial by jury has been the bulwark of liberty. The lot is in fact almost an ideal remedy where unscrupulous politicians, under the pretence of serving the people or of devotion to party principles, really conspire with each other for the corrupt control of the elections. The history of the Grecian and Italian republics contain instructive lessons on this subject.[1] But we need not go beyond our own experience, in times before party rule had degraded our municipal governments, to find dignified precedents for what we suggest as to the use of the lot. The ninth of the Articles of Confederation provided, as to the selection of judges or commissioners for settling disputes between states, that where a choice could not be reached by agreement, the selection of the judges and commissioners should be made by lot, in the way which is clearly set forth. It was provided in the first constitution of Maryland, adopted in 1776, that when candidates for governor or for the Senate should have an equal number of votes, after two ballots, the choice between them should be decided by lot. The party zealots of our time would very likely prefer — to such a decision — that a corrupting partisan contest should continue through an entire session, though the state should be without its needed officers for a whole year.[2] One of the commissioners provided for in each of two different articles of the Jay Treaty with England was selected by lot, and so was one of the arbitrators in a controversy between the United States

[1] Of all the mediæval republics that of Venice showed the most sagacity in government, and consequently longest avoided falling a prey to corruption and party despotism. Her use of the lot in selecting the members of the commission who elected the doge, or mayor, is interesting. The commission first drawn by lot named another; this was reduced by lot to one-fourth; and this named a third; and by such alternate operations of lot and election there was at length secured a last commission of forty-one members, who could elect a doge by a majority of twenty-five suffrages. Sismondi, *Italian Rep.*, pp. 109, 110. Mr. Adams seems to make the process even more complicated. 1 Adams's *Def. Const.*, pp. 62, 63.

[2] To bring about the original classification of the members of the United States Senate, provided for by the national constitution (Art. 1, Sec. 3), these members, though elected for the full term of six years, were — and so have senators from new states since been — required to submit to a decision by lot as to whether their terms shall be, in fact, six years, four years, or only two years.

and England under the Treaty of Ghent.[1] A law of Pennsylvania, enacted in 1872, after providing for choosing in the ordinary way six members of a committee on a contested election case in the state Senate, declares that the seventh shall be chosen through the agency of the lot from the members of the Senate, but under provisions too complicated to be stated here.[2]

It is not, perhaps, too much too hope that when a desire to promote the public interests by suppressing needless party contention shall become stronger than a desire for mere party gain, a much larger use than heretofore will be made of the lot, and with great public advantage.

VIII

1. It seems as if the method proposed for appointing justices might be peculiarly beneficial for the selection of such officers as district attorneys, sheriffs, coroners, county clerks, and registers of conveyances. Every one of these officers is unfit for his place in the degree that he is a partisan, or seeks to favor one party or faction rather than another. The facts are familiar that the elections of these officers are not only needless, but are generally demoralizing rather than elevating. They rarely involve principles, but are generally decisive as to much patronage and party influence.

2. The criminal and depraved classes are very directly and effectively interested in the election of district attorneys and sheriffs, while the conscious interest of the better class of voters in them is only indirect and remote — a condition highly unfavorable to good results from popular elections.

Hardly any method of choosing a district attorney could be worse than those popular elections which strongly tempt the candidates to solicit the votes of the criminal and de-

[1] *International Arbitration Papers*, 1896, pp. 3, 26, 28, 33.

[2] Penn. Law, February, 1872; Buckalew's *Pro. Rep.*, p. 243. A New York law of 1897, Ch. 414, Sec. 57, also appeals to the lot for a decision.

praved classes, which such officers have a duty to restrain, and cause these classes to make the utmost efforts for placing the candidates under obligations to themselves. Who can tell how many prosecutions are dropped, or how often evidence is allowed to be defective, by district attorneys, pursuant to preëlection pledges made to secure the ballots of the vilest voters? Who can fail to see how much more independent and courageous for their duties these officers would be if they received their appointments from the higher courts? So long as district attorneys in great cities are elected for short terms by popular vote, we may almost distrust the capacity of their people for local self-government, and feel certain they cannot have that which is really good.

Next to the election of these officers by popular vote, perhaps the worst possible method for choosing them is through an appointment by the mayor. This method stimulates the vile, corrupt, and criminal classes to the utmost activity for that mayoralty candidate who will promise them the sort of prosecuting officer they desire. It is too plain for argument that no persons can be more competent or independent for selecting a district attorney, or removing him, than the judges of the courts in whose presence his most serious functions are discharged. Who can doubt that a district attorney, selected as we have proposed, would be far more dreaded by the criminal classes in our cities than any elected attorney has ever been? We need not stop to show that most of these considerations are as applicable to the choice of sheriffs as they are to the choice of district attorneys.

3. A coroner, if not in a very strict sense a judicial officer, certainly has functions of a judicial nature, which require a non-partisan spirit, a judicial frame of mind, and considerable knowledge of law for their fit performance. It hardly need be said that his political opinions and party affiliations are utterly immaterial for the proper discharge of his duties, or that so far as he is a politician he is unfit for his position. For securing those qualities, or that knowledge of surgery and medicine which is needed in the office of coroner,

hardly any method of choosing him could be more unsuitable than a popular election, and hardly any could be better than some appointing Board of the kind we have suggested. Our elective method for choosing coroners seems almost to imply a paramount intent to screen the guilt of partisan bullies, and to use the power of political doctors in the coroner's office for party advantage.[1] It is important, in aid of justice and sound legal procedure, that one of the police justices, or some judge, should be associated with the coroners in holding of inquests, especially in cases of a suspicious character, or involving legal questions. Proceedings connected with the coroner's inquest are often disgraceful.

4. Since the foregoing was written, the New York legislatures of 1895 and 1896 — bodies remarkable for the domination of party spirit and their subserviency to the despotic and demoralizing leadership of a partisan boss — have provided for thirteen local districts for courts of minor civil jurisdiction in New York City, whose thirteen justices are made elective — one in each district — for the term of only six years, the law lamentably failing to provide for any common or just rules of procedure in the holding courts on the part of these justices, thus allowing the continuance of abuses which have long been discreditable to these tribunals and unjust to poor suitors.

And worse still, these legislatures provided for the election of coroners, county clerks, comptrollers, district attorneys, registers, and sheriffs, in New York City, for the term of only two years — shorter terms even than some of these officers had previously. Thus the ruling party and faction of the state of New York seems resolved to extend the party, short-term system, and make it easy to increase party des-

[1] So intolerably incompetent and unfaithful were some of the partisan doctors whom the ruling city party elected to be coroners when the writer was counsel to the New York Board of Health (1866-70), that he was called upon to prepare an ordinance which largely subordinated the coroners to that body, — thus imposing a salutary restraint, — which remained in force until the constitution of 1894 repealed the provision requiring coroners to be elected by popular vote. The legislature has now authority to require them to be appointed for long terms by some such methods as we have suggested.

potism and to revive several of the gravest abuses we have considered.[1]

5. We have seen how utterly unfit it is to elect any one of the six officers last mentioned, — save perhaps the comptroller, — how much the public interest requires that their terms of office should be during efficiency and good behavior, and how clear it is that their political opinions are immaterial. Yet, here are provisions intended — and sure — to lead to mere party contests over their selection every two years. Nearly half a million voters are to be called to the polls to elect these officers, whose nomination will be dictated by party managers, or sold by a party boss. Until it shall be impossible to enact such laws for New York City, it will be impossible for it to have a good city government. The law providing for these two-year terms ought to be entitled, "An Act for making City-Party management profitable, and for removing city officers as soon as they become competent for their duties."[2]

IX

1. As every popular election which involves no political principles, or only seeks to put administrative capacity into office, not merely causes great and needless expense for a city, and much trouble on the part of the voters, but increases the power and profits of vicious party managers, it is doubly important to supersede them by better methods of choice. We may find conspicuous instances of such evils in the popular elections of city and county clerks and of registers of conveyances. Their duties require no kind of politics, but merely the character and capacity to be found in the administrative positions of almost every large business firm and corporation. A long term for these officers and abstention from party management are essential for serving the

[1] Laws, 1895, Ch. 826; Laws, 1896, Ch. 715.

[2] In presence of such ominous tendencies, we may recall the facts that party rule in Florence reduced the terms of the officers of her chief magistracy not merely to two years but to two months, and that in Athens it caused senators to serve for only the tenth of a year, and generals for only a single day continuously.

people most usefully. Under sound municipal conditions, these officers would have no active relation with party politics. It is only through a perversion of their official functions that they can be made an advantage to any party. The existing practices as to these matters not only dishonor the creative genius of the American people, but are a grotesque example of partisan infatuation and blindness.[1] All the secret and corrupt methods of our party, primary, and election system are at great expense needlessly put into operation, when perhaps two hundred thousand or more voters go to the polls in New York City to elect even clerical officers. The very methods of their choice exclude the most worthy men who would gladly serve the people, and deprive those selected of much of the business independence essential for the best discharge of their functions. If there could be any doubt that it would be most salutary to fill these offices exclusively by civil service promotions from among those in subordinate positions, it would seem to be pretty clear that they should be filled by appointments to be made by some Board selected in the manner we have explained.

2. If it be objected that the methods we have proposed would not leave sufficient elections for city residents to enable them to conform their government to their will and highest interests, the answer is not difficult. First, the proposed methods of appointment will most facilitate the control of city affairs by the highest public opinion. It has been an excessive number of elections which has done much to disgust and discourage our patriotic citizens, while making the basest voters the most active, and the trade of corrupt political management profitable. Second, there would remain abundant elections at which city residents could vote, and in which all their local, as well as all their highest, interests will be involved: (1) elections of presidents and vice presidents; (2) elections of members of Congress; (3) elec-

[1] The state of Kentucky seems to be now (1897) holding a state election for the single purpose of choosing a clerk of a court of justice — one of the most absurd perversions of the party-election system yet exhibited.

tions of governors and lieutenant governors; (4) elections of judges; (5) elections of state senators and assemblymen; (6) elections of members of city councils who control city policy and make all city ordinances; (7) elections of members of constitutional conventions. Therefore all officers would remain elective who frame or amend constitutions; who direct political policy; who make, interpret, or repeal the laws; who adopt city ordinances; who control taxation; or who direct the expenditure of money. The great loss of power would not be on the part of the people, but on the part of the despotic city parties or factions, their bosses and leaders — who would be deprived of most of their unjust and demoralizing patronage and income, and consequently of much of their despotic power for perverting and prostituting municipal authority.

CHAPTER XVIII. — THE CHARTER OF THE GREATER NEW YORK AS AN ADMONITION IN CITY EXTENSION AND A LESSON IN CITY-PARTY GOVERNMENT

Grounds of public interest in the charter and the questions we are to consider. The public and party interests it involved. The charter might have been a much simpler instrument. What the charter should have provided in the public interest. The party interests involved in the charter, and why they triumphed. The ruling Republican faction in the state of New York was in great peril. This party was divided. The nature of the division explained. Danger that non-partisan charter would soon be adopted if a partisan charter should not be quickly imposed on the new city. Partisan charter suddenly resolved upon in order to suppress independent sentiment and non-partisan government in old New York and Brooklyn. A very inadequate time allowed for preparing charter. The commission for framing it a partisan body, unwisely selected for its functions. But for a purpose of gaining a party advantage, a much better commission could and would have been chosen. The most competent men on the commission condemned much of or the whole charter. Whether it was the duty of the best men on commission to insist on more time for making the charter, or to resign and defeat it. Unfortunate theory of ruling majority of the commission. They did not seek light from best-governed cities of the world, but seemed to yield to the partisan purpose which imposed the charter. The best municipal sentiment of the Republicans of the Greater New York demanded a non-partisan charter, while Tammany demanded city-party rule. The vote of the various elements of the city population. The charter represents Tammany, and not the people or the higher intelligence of the Greater New York. The Republican party majority needlessly and disastrously refused to provide minority representation. The state party that ordered the New York charter seemed to prefer a victory by Tammany to a victory by the independents who voted for Mr. Low for mayor. This purpose handed over the new city to Tammany rule. The new so-called charter is only a crude compilation, though it has some good provisions. Its vast bulk and great confusion mainly the result of haste and lack of time. The charter is a serious invasion of just Home Rule. It will increase special legislation, and more and more involve city affairs in party politics. The charter establishes despotic city-party government favorable to the continuous domination of Tammany. It gives the mayor autocratic power, which Tammany most desires for him. How this power has been exercised. The mayor dominates the city assembly. The city has no adequate ordinance-making power. The Municipal Assembly is an utterly inadequate city council. Why failure to elect members-at-large of the assembly is a misfortune. Tammany elected nearly all city officers. It receives large sums for nominations and dispenses charity through its partisan leaders. The state party which imposed charter used national and state party influence to carry first election under it. Tammany never so strongly intrenched as under this charter. Charter has remedied none of the greatest evils. Dr. Albert Shaw's condemnation of the charter. New York City Bar Association condemns it. Proceedings of legislature on its passage discreditable. How Tammany

attempted to elect its Greater New York mayor to be governor of New York. The unjust interference of state party managers with true Home Rule in towns and counties. The danger of cities ruling the rural population.

IT is but natural that a new charter for the largest city of the nation, framed at a time when the American people feel a deep interest in all questions concerning municipal government, should attract general attention. Such an instrument, and the government established under it, according to the estimate which may be accepted of them, are likely to profoundly affect for good or for evil the municipal legislation of the country. It is important, therefore, that they should be correctly understood.[1]

The questions of general interest concerning this charter, to which we shall confine our attention, are these: (1) Were its purpose, preparation, and enactment of such a character that they may be accepted as models for other city enlargements? (2) Are the general principles and theories of the charter such as can be commended? (3) Are the practical methods which it provides for city elections and administration intrinsically good, or likely to result in good government? (4) If not, can the charter be made satisfactory by amendments, or should it be condemned in its fundamental theories and framework?

I

1. It may be said that the purpose and method of preparing the charter are hardly material, provided its provisions are in the main intrinsically good. This is plausible, and in a strict and narrow sense it is true. Yet the question of motive and method will be found to involve matters of great practical importance.

[1] This charter is Ch. 378 of the Laws of New York, and was enacted May 4, 1897. The first election under it, in the Greater New York which it created, was held in November of the same year, and the new city government thus established came into control of the city on January 1, 1898. At this time the previous chapters of this work had been drafted. In the interest of symmetry and brevity, we may regret that this charter was not earlier at hand, but it has not caused any wish to modify the theories or methods commended in what we had written, though it has greatly increased our sense of the need of establishing and enforcing them in American cities.

We have shown that national party issues and party tests for city offices should not be regarded in city administration or in the election of city officers. No city charter, therefore, should be undertaken or framed to gain a party advantage, or to defeat a non-partisan movement for municipal reform. If it should come to be regarded as justifiable on the part of a party to use its authority — either directly or through the party majorities of commissions it shall appoint — to frame and enact new city charters for the purpose of perpetuating its power, or of otherwise promoting its own advantage, the evils connected with our municipal affairs would be greatly increased.

2. The making of a charter for a great city is, in a sense, the making of a city constitution — an act which should be justly and deliberately undertaken and performed, in conformity to much the same provisions for a full representation of all the people to be affected which are provided for in state constitutions in reference to the amendment of such instruments.

Justice to the facts will compel us to show not only that this Greater New York charter was suddenly decided upon, hastily framed, and hurried through the legislature to gain a party advantage, but that it had for one of its purposes the suppression of a rising, non-partisan public sentiment and majority, which were opposed to city-party domination. The lesson these truths can teach must not be lost, much as we should prefer to confine ourselves to the provisions of the charter itself.

II

To understand this lesson, or even the significance of the leading provisions of the charter, — we must refer to some public interests and to certain party interests and prospects likely to be greatly affected by its enactment.

1. Let us first glance at the public interests involved. There was no serious need or earnest demand for a new charter when this one was suddenly provided for by law.[1] The

[1] N. Y. Law, May 11, 1896 — a law which appears as a measure of the dominant state party and provides for the very hasty preparation of a new charter.

need and utility of before long bringing, under a single appropriate municipal government, the region and political divisions about the harbor of New York were unquestionable; but there was ample time, without injury to any public interest, for considering the best order and methods of forming this union, and the municipal principles upon which it should be based. The advantages, for example, of soon having a general sanitary, police, judicial, and excise administration, and a comprehensive system for bridges, docks, and transportation for the whole vicinity, were manifest. But in many particulars, and especially in all the more rural sections of the new city — which includes a whole rural county besides several towns — there were no reasons, aside from party politics and selfish interests, why the new charter should, at the outset, supersede the existing local administration. It would have been entirely practicable, while bringing all the territory conditionally into the new city, to have framed a charter which would have actually brought under the new administration, at the outset, only the larger subjects suggested, — perhaps one-third of the matters covered by it,[1] — the charter having appropriate provisions for the gradual extension of the new administration to other sections and matters as experience and convenience should make it desirable. By acting on such a policy — if the authors of the charter had considered only the public interests — the framing of the new charter and the transition from the old to the new conditions would have been much more easy and simple.

This manner of dealing with the matter — which may be an instructive precedent in making enlargements in other cities — would have avoided not only a large part of the confusion, conflicts, and other evils of dealing with so many things at once, but would have greatly facilitated the reten-

[1] The practicability of bringing only such subjects at first under the new charter and government had been demonstrated. More than thirty years earlier, the writer had acted as counsel for a Board of Health, a Board of Excise, and a Board of Police, whose jurisdictions were almost coterminous with the limits of the Greater New York City. There had been no embarrassments in the administration.

tion of many able and admirable officers in the city service whom the sweeping and partisan methods adopted excluded from office.[1]

2. The cities of New York and Brooklyn — five-sixths of the now Greater New York — at the time the new charter scheme was suddenly proposed were being better governed than they had been for many years under former mayors. The administration under Mayor Strong was, to a large extent, non-partisan, — good men belonging to different parties holding the leading offices, and the merit system and the civil service examinations being more fully and fairly enforced than ever before or since.

3. The greater necessities for radical changes in the government of the city — which needed to be made with convenient despatch — were these: (1) for a city government based on non-partisan principles; (2) for a non-partisan city council, with permanent authority, which would insure Home Rule in the government of the new city; (3) for a representation of the minority as well as of the party majority, as essential for the creation of such a council; (4) for Free Nominations and Free Voting as indispensable conditions of true minority representation; (5) for the election of the mayor by the council, and not by the dominant party majority, so that he should represent the city, and not a single party; (6) for the enforcement of the merit system, and of impartial, non-partisan examinations, and the registration of laborers, for entering the minor official and labor service of the city; (7) for the absolute suppression of all political assessments; (8) for the rejection of all party monopoly or advantage in the structure of the city government. The new charter *does not accomplish* — or attempt to accomplish, save in fatally defective manner as to the merit system — *a single one of these results.*

[1] Among these officers thus excluded were General Green in the Dock Department and Mr. Wilson, president of the Health Department, — whose retention was of public importance, — and especially Colonel Waring, the head of the Street Cleaning Department, whose loss was in a measure a national misfortune.

III

Let us now look at the party interest and some significant facts involved in the question of a new charter.

(1) In 1896, before the law had been prepared for creating the commission for framing the new charter, the Republican party was dominant in the state of New York, having the governor and a majority in both houses of the legislature; and Mr. Strong, a Republican, was mayor of New York City. Tammany was discredited and enfeebled by reason of the recent exposures of its maladministration. It was further at a disadvantage by reason of the greatly improved city administration of New York under Mayor Strong, who had demonstrated the practicability and superiority of non-partisan city government.

(2) The Republican state boss and party managers, as well as the Tammany boss and managers, had consequently lost most of their city patronage and the income it had given them. They were mutually disappointed and angry; they were naturally sympathetic toward each other, and hostile toward the supporters of Mr. Strong, whose administration they had constantly obstructed.[1]

(3) According to superficial observation, the Republican state majority when the legislative session of 1896 opened at Albany had good reasons to expect a continuance in power; but a full view of the facts shows its position to have been one of great anxiety and peril. The more non-partisan and independent voters, especially in New York City and Brooklyn, had been rapidly gaining strength as compared with the voters who sustained that majority.[2]

[1] It is quite true that the Republicans — led by Mr. Platt as state boss — united with the Independents in electing Mayor Strong. But would they have done so if they had thought he would abide by the Independent platform, or withstand their pressure for office and patronage?

[2] Mr. Edward M. Shepard shows (*Atlantic Monthly*, Jan. 1898) that in 1885 the Independents commanded 13,600 votes in Brooklyn, say 4600 Democrats and 9000 Republicans; that, in 1895, these 4600 Democratic votes had increased to more than 9500; and that in 1897 the Independent candidates in that city were supported by more than 65,000 voters. We have seen that Mr. Strong's nomination for mayor of New York was practically dictated by the independent, non-partisan

(4) The internal condition both of the ruling faction and party in the state were hardly more satisfactory in 1896 than the votes in the two great cities as shown in the last note. The party was divided into two irreconcilable divisions by very distinctive theories and methods. The adherents of one division, embracing most of the noblest members of the party, and the leading journals and periodicals in those cities, were consistent supporters of Republican principles. They were hostile to bosses, and opposed to making party machinery either mercenary or despotic. They were supporters of civil service reform, ballot reform, primary election reform, corrupt practice reform, and municipal reform, — and they became supporters of Mr. Low for mayor.

The other division of the party, of which the state boss was the leader, was not only in general hostile to these reforms, but enforced a peculiar and despotic theory of party management. It held that municipal affairs should be managed in the interest of state and national parties, and that party tests should be enforced for city offices. It dominated the legislature of New York. A large proportion of its Republican members had apparently gained their election through servility to the despotic state party system and its boss, which largely disqualified them for the highest duties of legislators. They were ready to impose upon New York city almost any charter which they might think would benefit their faction.[1]

(5) There was another matter which was a source of

city vote of 1894. His good administration increased that vote. When, in November, 1897, the voters of New York City came to vote under the new charter, 151,000 of them voted for Mr. Low, the non-partisan candidate, and only 100,000 voted for Mr. Tracy, the partisan candidate of the Platt faction, — showing that the assumed majority in the legislature of 1896, which hastily ordered the charter to be prepared, had become a minority in New York City. We therefore use the phrase "ruling faction" to designate this minority, merely for convenience. It was a minority and in a sense a faction in New York City, though it was the majority — and in a sense it was the Republican party — in the state at large.

[1] It is not assumed that a majority of these Republicans were regardless of the welfare of the city or were without patriotism; but like the devotees of Tammany, whom they liked far better than they did the members of the other divisions of their own party, they assumed partisan control by their faction to be essential to all municipal improvement.

anxiety to the promoters of the new charter. There was imminent danger, if they did not speedily enact a charter according to the party theory, that their opponents might soon secure the adoption of a non-partisan government for New York City. Mr. Andrew H. Green[1] had proposed the creation of a Greater New York as early as 1868, and his effective and non-partisan discussion of the subject had before 1890 developed a strong sentiment in its support. In that year a bill on the subject which he drafted became a law.[2] It provided for a state commission of twelve, of which Mr. Green was made president, for considering the question of consolidating the jurisdictions which now constitute the Greater New York. There was apparently no party politics in the movement, which was based on public needs and business principles. The commission was to act deliberately, being unlimited as to time for doing its work. It was to report from time to time to the legislature, and was to present bills and the reasons for offering them. The advance toward a new charter was to be gradual and well considered. Here is a plan for city enlargements which deserves the thoughtful attention of American cities contemplating such measures.

Much had been done by this commission, and more was about to be undertaken, when the law of May 11, 1896, — which provided for the new commission which framed the charter we are considering, — was suddenly enacted by the ruling faction near the end of the legislative session, without consulting the cities to be affected, or any application from them.

Obviously the authors of this law felt that something must be speedily done to change the municipal situation in New York City and Brooklyn, or the dominant faction of the Republican party might be overthrown in these cities by their non-partisan vote at the next election. Party managers thus situated, and who believe in party govern-

[1] To whom the people of New York City were indebted for valuable services as one of its officers.

[2] N. Y. Laws, 1890, Ch. 311.

ment for cities, are not necessarily either corrupt or unpatriotic merely because they are ready for hasty and desperate legislation which may give their party control of a vast city — and possibly long domination in a great state. Nevertheless, it requires very rare party virtues to act fairly or wisely under such conditions.

IV

1. Such were the dangers, temptations, and possibilities in May, 1896, when the legislature was about to close its session. These were the great questions: —

Could not Mr. Green and his threatening charter, and the detested example of successful non-partisan city government in New York and Brooklyn, be at the same time suppressed? Could not the independent voters of these cities be rebuked and overwhelmed by a new charter based on rigid party theories, — a charter which should apply party tests to city offices, give the city patronage and spoils to party managers, and require all city administration to be subordinate to state party interests? The new city contemplated would at once have about three and a quarter millions of people; it would yearly disburse perhaps $60,000,000 of public money.

To secure the utmost, several essential conditions must be supplied: (1) Mr. Green's commission must be suppressed;[1] (2) the new commission must be at once created before any new election — such as the defeat of Mr. Tracy or the triumph of Mr. Roosevelt — should show the fatal weakness of the boss faction; (3) the commission must be so made up that the ruling faction could always control it; (4) there must be facilities for arrangements with Tammany of the kind with which our readers are familiar;[2] (5) this

[1] He was put upon the new commission, where, against its majority, he could accomplish nothing, even had not his bad health prevented his attempting anything.

[2] See p. 126, also *Harper's Weekly* (July 16, 1898), which uses this language in its editorial columns: "The present bi-partisan police board of the city was established through a deal between Tammany and the Republican machine . . . for the purpose of giving . . . part of the patronage of the police force of

faction must carry the first election under the charter, or the whole scheme for its creation might be a municipal disaster, as well as a disgrace to its authors.

2. The law of May 11, 1896, providing for the commission for framing the new charter, with the action of the governor under it, supplied most of those conditions. The method of a gradual extension, in the public interest, of the new city's administration — as we have just explained it — was rejected as incompatible with the party scheme. The ruling or boss faction, feeling sure of carrying the first election under the charter, was resolved to have all the territory, all the patronage, and all the spoils possible, — and at once.

3. Under such conditions, the law needlessly — save for mere party reasons — and disastrously provided that the commissioners should be secured, and the new charter and various incidental laws should be devised, perfected, and reported complete by the commission to the legislature on or before the first day of February, 1897, and that the commission itself "should cease to exist" one month later. The mystery of this strange haste would seem inexplicable — mere madness — but for the explanations we have given. The time allowed was utterly inadequate for the vast work required of the commission.[1]

After the time required for filling the membership of the commission, hardly seven months were left in which to accomplish the immense work undertaken, — one so vast and difficult that the best men the state could have supplied

the metropolis, while, in return, Tammany was to have Republican aid in securing legislation which it needed for its own corrupt purposes." We may add that, owing to the hasty and faulty manner, to say the least, in which authority over the police was conferred by the commission, this faction has found it necessary to call an extra session of the legislature to prevent Tammany having, under the charter, a dangerous police control of the city elections, in New York, and, as this note is being written (July, 1898) this session is being held.

[1] The so-called charter reported by the commission and enacted by the legislature May 4, 1897, fills 559 official pages aside from 58 pages of index, and is divided into 1620 sections, — the monstrous instrument being more bulky, perhaps, than would be the combined charters of any other twenty cities of the Union, — longer than the charter provisions united of all the more than three hundred cities in England.

would hardly have been able to perform it satisfactorily in two years.

4. For the proper comprehension of the lesson which this piece of legislation should teach the American people, it should be understood that the monstrous bulk and crude and confused provisions of this charter must be mainly attributed to this needless restriction of time, which should be characterized as a grave offence against municipal civilization and justice in the United States.

V

1. The membership of the commission is significant in reference to the motive and purpose of the charter, and has involved very unfortunate consequences. It was composed of fourteen members, of whom nine were Republicans and five were Democrats. Two of them were state officers residing in Albany, or in remote parts of the state, as sure apparently to support the partisan purpose of the charter as they were to do no work upon it. Another commissioner was the mayor of a scandalous, petty municipality; but he could cast a vote with the ruling faction. Save as elsewhere explained, there was not upon the commission a single active supporter of the developed, municipal reform sentiment of New York or Brooklyn, — nor hardly any man who had shown a non-partisan purpose to fearlessly deal with the great problems of municipal government — though many such men were at hand.[1]

[1] Neither Mr. James C. Carter, the leader of the New York Bar and the president of the National Municipal League, who had previously been a commissioner for framing a charter; nor Mr. Olney, who had just served usefully as an official commissioner in the codification of the New York City laws; nor Mr. Goodnow, Professor of Municipal Law in Columbia University and a leading and able writer on municipal government; nor Horace E. Deming, an effective and experienced supporter of municipal reform; nor Simon Sterne, a student of city affairs, who had served on a New York municipal commission; nor Colonel George E. Waring, whose aid would have been invaluable; nor Dr. Albert Shaw, the accomplished and enlightened student of municipal science, whose works we have often quoted — though all residents of New York City — nor Professor Commons, a thoughtful writer concerning city problems — was given any place upon the commission. But Ex-Mayor Gilroy, the last Tammany mayor of New York, was one of its most active members — and apparently to no one was

2. The mayor of New York and Ex-Mayor Low were almost of necessity made members of the commission, but they were in a minority by themselves among the Republicans upon it. Mayor Strong vetoed the whole charter when it came to him from the legislature for approval, and Mr. Low opposed several of its leading provisions.[1]

VI

1. The reader has perhaps been saying that good citizens should have refused to serve upon such a commission having such a purpose and no adequate time for its work. Much could be said in favor of this view. It has a great importance — involving, as it does, the moral obligations of commissioners in all similar cases. But there are two sides to the question raised. If the best men selected had declined to serve as commissioners, the others might have prepared the preordained charter with provisions still worse than those approved. Besides, it might have been expected that some of the leading party men, among the majority upon the commission, would make a stand for sound municipal principles and for adequate time for making a good charter for the new city — even if party managers and the state boss should be offended — rather than hand the city over to Tammany, as

the charter more highly satisfactory than to him. But neither Ex-Mayor Hewitt, of large ability and experience in city affairs, nor Mr. Charles S. Smith, ex-president of the Chamber of Commerce of New York City, who had made effective efforts to improve its government, nor any similar reformer was put upon the commission, — though petty, rural Staten Island was given a place among its members. It hardly need be added that a fine opportunity for the salutary discharge of a high executive duty in appointing this commission was not very fully improved. Such a commission can hardly be said to represent municipal sentiment in the Greater New York.

[1] The placing of Ex-Mayor Low upon the commission was an act of adroit sagacity — if not of moral compulsion. He was a student of municipal science of distinguished reputation and experience. He had been the first mayor of an American city to enforce the merit system and civil service examinations, for the selection of city officials. His presence upon the commission might do much to prevent suspicion and criticism on the part of the friends of reform. The facts that Mr. Low became the candidate of the non-partisan and independent voters for mayor of the city in the first election under the new charter, and that Mr. Tracy — the chairman of the commission — was the candidate of the ruling faction for that office, clearly illustrate the widely antagonistic elements which they represented.

they did, at the first election. It was perhaps not too much to hope that some of them would study the best American precedents and the rich municipal experience of Europe, and, as a natural result, be ready to adopt some of their salutary and well-tested methods, rather than reproduce in the new charter, as they did, the old, partisan devices which New York and Brooklyn had long since condemned as hopelessly mischievous and intolerable.[1]

These hopes were disappointed. We should here note that when it was seen that no adequate time was to be allowed for framing a good charter, that partisan motives were prevailing, and that the needed investigations of municipal experience were not to be made, the question again arose whether there was not — from these facts — a duty to retire from the commission and to defeat the charter rather than allow it to be made a crude and partisan instrument. Important as this question certainly is, we have no space for considering it. It is a question as to which the opinions of thoughtful men — we believe — are not in harmony. Future commissions may find similar questions as to their duties to be of grave, practical importance.

2. The ruling majority of the members of the commission, apparently, accepted a view of the purposes and functions of the body similar to that which dictated their appointment. The duties of the citizen seem to have been to some extent regarded as superseded by the engagement of the commissioner. This conclusion predetermined the kind of a charter we have and the victory of Tammany in the city election of 1897.[2]

[1] It is but just to Mr. Low to say that he had no time for such investigations, for, as president of Columbia University, he was in the stress of the serious work of its removal from its old site to a new one; and Mayor Strong had on his hands the very absorbing duties of mayor of New York City. We may express our regret and surprise at the failure of the ruling majority of this commission to make any adequate investigations of the kind we have suggested.

[2] The official report of the commission went very far toward the avowal of this strange theory, for it declared that "the commission has not been charged with the duty of preparing a city charter at large," — a very unwarranted view of the matter we must think — and it then goes on to show that the purpose was much narrower. What was that purpose?

3. The facts thus set forth should prepare us for a very defective and crude instrument at the hands of this commission. The reader will hardly be surprised when we say that the so-called charter it prepared can in no true sense be designated a charter; it is only an ill-digested compilation. Yet it is but just to several members of the commission, who labored under very great embarrassments, to say that it contains some excellent provisions due to them, the most important of which are referred to in notes to previous chapters; that — as we believe — much patriotic and conscientious labor was given to their preparation; and that the most objectionable provisions of the instrument are mainly the results of a blinding, misleading party bias, and a false theory of city government and of duty to one's party.

4. Nevertheless, it must be said that the majority of the commission, not very long after its labors were begun, became aware that the time allowed for its work was utterly inadequate, so that the only alternatives must be, (1) a crude, defective, and intolerable, so-called charter; (2) a firm demand by the commission upon the legislature for more time; or (3) a resignation of their offices by the commissioners. We think that to make such a demand and to refuse to go on unless it should be allowed was a duty which the commission owed alike to itself, and to the people of New York City — a duty the discharge of which, with a condemnation of the partisan purpose of the charter, would have been a noble contribution to the cause of municipal reform in the United States. Whether the minority — the more enlightened members of the commission — should have then resigned, leaving the others to accomplish the partisan purpose of the commission all the more easily and completely, is a question which every reader must answer for himself. One result of such a resignation of the commission would have been that no new charter would have been adopted, — that Tammany would not now be intrenched more strongly than before in the Greater New York for four years under the most despotic and partisan charter ever imposed upon an enlightened city.

VII

1. It would be beyond the sphere of our undertaking to consider matters of mere wisdom or policy on the part of party managers, yet it seems very clear that they should comprehend and defer to the wishes of the majority of their own party. This they utterly failed to do. While the commissioners were compiling the charter, the citizens of the proposed Greater New York were preparing for an election to be held in November, 1897, in which they were to express their judgment as to the principles upon which the charter should be based, and were to elect officers to serve under it. Let us anticipate some facts of this election. Mr. Tracy and Mr. Low were the opposing republican candidates, and Mr. Van Wyck was the candidate of the Tammany Democracy. The supporters of Mr. Low were pledged by their platform in favor of non-partisan city government and Civil Service reform, and hence against the main theories of the ruling faction, which had ordered the charter.

Speaking in round numbers, we may say the Tammany candidate received 234,000 votes; Mr. Low, 151,000 votes; and Mr. Tracy, 100,000 votes; while Mr. Henry George — really a non-partisan candidate — received 22,000 votes. Therefore, of the more than 500,000 votes cast, Mr. Tracy, the president of the commission, received less than one-fifth of them, and more than 50,000 less votes than the number cast for Mr. Low. Though Tammany succeeded, its candidate had the approval of many thousands less than a majority of the voters. The charter, therefore, does not represent *the people of the city of New York or even its Republican voters, but Tammany.*[1]

2. It can hardly be doubted by well-informed persons that the supporters of Mr. Low included a proportion of voters of superior intelligence and character quite unparalleled in the

[1] Quite a number of Democratic votes were cast for Mr. Low — a fact which further illustrates the pervading non-partisan sentiment of the city, as well as the desperate infatuation of the boss faction.

other groups. Nearly every reputable political and religious journal in the new city, every periodical in the metropolis in which the higher moral and political sentiment of its people find their best expression, and nearly every one of the numerous organizations for municipal reform appear to have supported Mr. Low.

3. We cannot therefore characterize this attempt of the boss faction to impose a mere partisan charter upon such a community as anything less, on the part of the leaders, than an example of audacious assurance, blindness, and partisan desperation, — unless, indeed, they had such relations with Tammany that they could expect more from its victory than they could hope to gain from the triumph of the supporters of Mr. Low. An ingeniously devised, despotic form of government, through which they expected to reduce into a sort of feudal subjection to themselves the most numerous and worthy of the intelligent voters of the new city, was captured by Tammany. But the election since of such a governor as Mr. Roosevelt has shown that there are, nevertheless, surviving virtues, from which good government may yet be developed.

VIII

From the admonitions to be drawn from the motive and making of this charter, we may turn to the lesson taught by its omissions and provisions. We have shown how essential it is to good government that the minority shall be represented in city councils and state legislatures; and that the Republican party — many years ago, when its moral tone was higher — had committed itself to the support of such representation, to which Tammany then declared itself hostile.[1]

When the new charter was being framed there was an easy opportunity available for establishing such representation — the ruling faction controlling every branch of the government. The need for such representation had greatly increased with the size of the city, — the unrepresented minorities having

[1] For the facts, see Ch. IX. and pp. 237, 238.

become immense. Only the boss faction among the Republicans, and Tammany, opposed it — the supporters of Mr. Low favoring such representation.

The fact that no provision was made in the law creating the commission, or after the commission's report, for such representation seems to prove that the ruling faction was hostile to it, — disclosing its paramount purpose to have been to increase its own power rather than that of the Republican party. The 151,000 voters who supported Mr. Low were to have no representation in the city council or the legislature, save as they could gain it under the party system in the small electoral districts which the Tammany faction and the boss faction alike favored. We have seen how easily such a representation may be, in substance, if not utterly, defeated under the party system.[1]

2. If the boss faction desired no Republican members from the new city at Albany, and none in the city council except those it could control, — or if it regarded Tammany members as less dangerous to its charter schemes than representatives of the independent and non-partisan voters of the city would be, — it is easy to account for the defeat of minority representation. The bosses and managers of the parties and factions — which would alone be represented — could, perhaps, easily agree under the new charter. The governor, under it, can remove the mayor. Both state and city government could, apparently, be made a matter of secret arrangement between a very few persons.

[1] See pp. 241-244. It is but justice to the commission to say that a majority of its members, at least ostensibly, favored minority representation, — perhaps at first supposing the ruling faction would allow it. The commission reported a provision favoring it, despite the opposition of the Tammany members. This provision mysteriously and *needlessly* advised an amendment of the state constitution to make it valid. Judge Dillon, a very able lawyer, who was a member of the commission, gave it a written opinion — in which it would seem that Mr. Tracy concurred — that minority representation could be legally established under the present New York constitution. (*Albany Law Journal*, Nov., 1896, p. 347.) The boss faction failed to support, if it did not oppose, that provision — apparently like Tammany preferring to have only parties represented in the city council and all non-partisan voters practically disfranchised. We are sorry to have to add that, after the hostile attitude of the ruling faction became known, the majority of the commission seems to have made no effort to sustain its provision for minority representation.

3. We repeat that in no just sense can the instrument prepared by the commission be designated a charter. It is a compilation — if we should not say a conglomeration — of provisions in a limited part fit for a charter; in larger proportions merely suitable for general laws; in its main bulk mostly appropriate only for city ordinances.

A charter, or city constitution, should be a clear, concise statement of the general powers which the state confers upon a city, duly defining its fundamental organization and the authority of its great departments and officers; — but allowing the city to freely exercise these powers through the making of its ordinances. The part of the five hundred and fifty-nine pages of this so-called charter appropriate for such an instrument would not have greatly exceeded in length the fifty-eight pages of its index, — about the length of the great municipal codes of England. If this unwieldy bulk, and these departures from all the best precedents and principles, affected merely style, convenience, and perspicuity, we could pass them without notice; but the consequences are far more serious. They obscure all just distinctions between general laws, charters, and ordinances; they strongly tend to false and vicious theories, to confusion of thought, to arbitrary special laws, to excessive and needless litigation, to the suppression of municipal Home Rule.

4. This so-called charter is, we think, the most serious invasion and denial of just municipal freedom, or Home Rule, which any enlightened state of this generation has sanctioned. No other law of New York has made any other city so dependent as the Greater New York upon state legislation in the details of its local affairs. By sweeping all provisions into the charter, — not only all laws applicable to any part of the new city, but the details of ordinances, and sometimes of even regulations or rules, — *they have been stereotyped in the form and rigidity of law, and have been placed under the control of the state legislature. Hardly any change can be made save by the consent of that body.* The exercise of the ordinance-making power is, therefore, in the main, denied to the new city. Page after page of appropriations and expendi-

tures have been by this so-called charter imposed upon the city, as to which it should have complete discretion.[1]

IX

1. The gravest objection to the charter is that it has provided for a party government in the new city of the most radical and despotic kind, — save in so far as the state constitution has made the methods of Civil Service reform imperative within certain limits. That both the boss faction and Tammany desired such a government, with party tests for city offices, is too clear for doubt. We have so fully set forth the evils incident to such a city government that nothing further need be said, save to point out some evils of the kind which this charter will aggravate.

2. Party government in cities requires despotic power in the mayor, — that he should be an autocrat elected by the party majority. This charter provides for such a mayor. The city-party system requires the mayor to have an absolute power of appointment, without any need of confirmations. This charter creates such a mayor. This system requires the mayor to be absolute for making removals. This charter provides for such a mayor. As Tammany casts more votes than any other organization in the city, such a mayor is precisely the mayor which Tammany most wishes and needs for its continuous and absolute supremacy. To bring the whole city administration to the test of the largest numerical vote, to make that vote decisive of all patronage and control, and to suppress the minority, was the supreme

[1] See Section 230 of the charter. One can hardly read page after page of the names of institutions which secured appropriations through the charter without a feeling that the support of these institutions might have been thus facilitated. If it shall be said that there were fewer laws affecting the city enacted at the session of the legislature next following the passage of the charter than formerly, the answer is that the ruling faction had become alarmed and disgusted by the public condemnation of the instrument, and Tammany's capture of the city. The proposed amendments of the charter were very numerous, but to have even discussed them would have overwhelmed with obloquy the men most responsible for it.

desire and interest of Tammany. All this is precisely what this charter does. The mayor under it has authority to fill all the highest places — the heads of all the departments and commissions, nearly seventy in number, — at his mere pleasure, or that of the party boss, — even for mere party reasons, as he or the boss pleases.[1] The man in nomination for mayor may bargain for filling them secretly and autocratically, according to arrangements made with the boss and managers of his party, or solely to gain votes for his own election. A royal despot could hardly have a power more absolute or demoralizing. These appointments involve, and practically decide, the choice of numerous heads of bureaus and divisions. The merits of these appointments are not required to be anywhere explained or publicly discussed. Orders at meetings in the secret chambers of the party or its boss may settle all these things under this charter.

If Tammany had asked for a law, in these regards, most favorable to its instant success, and most sure to perpetuate its old supremacy and party system, it could hardly have proposed anything better for such purposes than the provisions of this charter.[2]

3. If we had space for details as to the mayor's general authority, his tremendous power for serving his party and defeating all non-partisan movements would, we think, impress the reader. The Board of Estimate and Apportionment, for example, — with its vast powers somewhat modified, — is retained by the charter. Of the five members of this Board, the mayor is one; he appoints two others, giving him control of a majority; the remaining two members are to be elected — and almost certainly by the same party majority which elected the mayor. No other organization of the people can, apparently, have any chance of a representation upon the Board.

[1] There are a very few exceptions to the general authority for mere arbitrary appointment — mostly noted elsewhere.

[2] There was no reason for surprise when it appeared that no member of the commission was more delighted with the charter than an ex-mayor of Tammany, who well knew what could be done under it. The boss faction of the Republicans was equally delighted, for it was madly sure of electing the first mayor.

There are seventeen other executive departments, or commissions, besides the Board of Education, nearly all of them having more than one head, or commissioner, and most of them from three to five. The head of one of these departments is the comptroller, who is to be elected by the people — practically by the dominant party.[1] The members of the other fifteen commissions are to be appointed by the mayor, and among them are the commissioners of Police, Health, Charity, Docks, Buildings, and the Fire Department — obviously involving vast patronage and power. So far as we can learn, every person appointed by the mayor under these powers has been a supporter of Tammany, thus practically making an acceptance of its party opinions and policy a test for every city office, save where the Civil Service laws have compelled appointments for merit.

4. The theory of making party opinions a condition of holding office under the new charter — and to promote its partisan purpose — has been applied to judicial offices as well as to all others. We have seen that Mayor Strong had both brought into office, and allowed to remain there, many officers, both judicial and executive, whose party opinions differed from his own. Under the new charter a descent was at once made from this enlightened policy to one of half-civilized, partisan proscription — even in the judicial sphere. Every one of the several justices appointed by the mayor of the new city has been, so far as we can learn, a supporter of Tammany. At the last election a great scandal was caused, and many Democratic voters were alienated, by a refusal of Tammany, for mere partisan or more selfish reasons, to renominate an admirable judge.[2]

[1] How far the comptroller regarded himself as a party representative is apparently shown by the fact that he paid, as part of his election expenses, $5000 to the Tammany or New York General County Committee; $5000 to the Democratic Committee of Kings County; and $200 to that of Richmond County, — all such expenses, according to his statement, amounting to more than $12,500.

[2] Tammany seems not to have forgotten its practice of gaining money in connection with judicial nominations. Of the two Tammany judges last (1898) elected in the city, one of them states that he paid $5775, and the other that he paid $5100, as election expenses, and more than $10,000 of this sum appears to have gone to the Treasurer or Committee of Tammany. The persons last elected

5. We shall fail to appreciate the despotic party power of the mayor under this charter if we do not see how far it extends in the sphere of legislation. On a superficial view the charter seems to confer considerable legislative powers upon the Municipal Assembly, but they are in large measure delusive. We have just shown how seriously they are impaired by including ordinances and rules as a part of the charter. They are much further reduced by giving to the mayor practical control of all the largest matters of legislation. Every legislative act of the Assembly must be exercised by ordinance or resolution, as to which the mayor has the ordinary veto power. But the charter further provides that if the ordinance or resolution "involves the expenditure of money, the creation of a debt, the laying of an assessment, or the grant of a franchise," it shall, in the first place, "require a three-fourths vote of all the members elected to each house of the city assembly" to pass it; and, secondly, if the mayor vetoes such an ordinance or resolution, "it shall require a vote of *five-sixths* of all the members of each House to pass it over the mayor's veto."[1] It is obvious that the ordinances and resolutions embraced in the category to which this veto power extends include not only all those of large importance, or involving the general policy or expenditures of the city, but would, literally construed, limit the assembly's purchase of the chairs or even the stationery needed for its own use.

The mayor is thus, for most practical purposes, made supreme in the sphere of city legislation. The assembly is in substance branded as an inferior, untrustworthy body,

as Sheriff and Register state, one that he paid $2850, and the other that he paid $6750.48, as such expenses. If these sums are less than we have shown Tammany candidates formerly paid (see Chs. IV. and V.), it should be remembered that the public now prints and supplies the votes, so that the sums now paid to Tammany have quite as little basis in justice or propriety as the larger payments have ever had. There is a plain need and duty of suppressing this evil by law — which would deprive Tammany of vast sums that now constitute a main element of its power for despotism and corruption — made all the greater by the new charter which has vastly extended the sphere of its domination. The English law forbids such needless expenses. See p. 321.

[1] Charter, Secs. 39 and 40, and see Sec. 226.

practically subordinate to the mayor and undeserving of public confidence or respect. The *greatest of all city problems* — that of creating a responsible City Council competent to exercise the ordinance-making powers in city affairs — is, therefore, not only unsolved by the charter, but is apparently unappreciated — in the very sphere of its essential existence — being encumbered and subordinated in order to make a greater realm for a despotic, party-elected mayor.

6. The mayor is in substance declared to know better — to be more trustworthy as to what money needs to be expended — in every district of the city than the members who represent it in the assembly. If 100 out of any 121 members sitting at any time in the assembly favor any purchase or measure that costs money, the mayor with the other 21 members can defeat it — despite the unanimous vote of the 100 other members, — the wishes and judgment of the mayor counting more under this charter than the wishes and judgment of 79 members of the assembly. Such a city assembly is not so much a representative body as a parody of it, and is liable, therefore, to become a fit object for contempt. The charter makes it certain that the men most worthy to legislate for a great metropolis will never enter its assembly. It can never have debates which will be an adequate check upon party corruption or administrative extravagance and despotism under a partisan mayor.

We need not stop to inquire whether only mere petty authority was conferred upon the assembly in order to make the mayor more conspicuously autocratic, or because the constitution of the body was conceded to be so bad that it could be trusted with nothing of real importance.[1]

[1] There are provisions in the charter for a limited kind of local authority being exercised in the five several boroughs into which the city is divided. Each is to elect a borough president — all but two of them having an annual salary of $5000 each. These high-sounding, but we must think needless, officers are speciously justified on the theory of a need of more local official knowledge and control. We have no space for justice to the subject. There is a gross inconsistency between such an estimate of these borough officers' local knowledge, and those provisions of the charter which enable the assumed omnipresent mayor, in every quarter of the city, to overrule any majority of the local representatives of the people, less than five-sixths, upon every question of local expenditure or informa-

X

1. If, from the mayoralty, we turn to the city assembly, we shall find further evidence of a purpose not only of making the mayor a party autocrat, but of success in establishing a city-party government of the strictest kind.

The legislative body created by the charter is designated the "Municipal Assembly." It is composed of two houses. The higher is called the Council, which is composed of twenty-nine members, elected — except the president — from newly created districts for the term of four years.

The other house of the assembly is called the Board of Aldermen, and it is to be composed of one member elected for a term of two years from each assembly district of the city — an arrangement well calculated to perpetuate the old party machinery and vicious leader system in these districts under Tammany rule.[1]

2. We should take notice here that there is no classification of the members of either house of this assembly, the charter in this particular, as in so many others, rejecting the precedents of all the best-governed cities of the world. As the purpose was to create a partisan assembly, care was taken to exclude all minority representation — to embarrass all representatives of any persons whatever save those who should appear and vote as members of a party. The 151,000 voters who supported Mr. Low cannot be represented — or even make a nomination — unless they conform to the needless,

tion. The theory of one set of these provisions is confuted by the other. These borough presidents are certain to have little official work to do, but they are likely to be all the more efficient as electioneerers for their party. They have been regarded by Tammany as party officers, and every one of those elected were Tammany men. They ought, in all propriety, not to be active in party politics, yet one of them was the chairman of the general committee of Tammany. Another, who says he expended $3090 for his election expenses, paid $1080 of that sum to a Tammany committee. Can we wonder that Tammany favored such needless local officers?

[1] It is worth while to notice the inappropriate and misleading names for these bodies. By common understanding the city council means the whole city legislature, but in this charter it means only one branch of it; the aldermen, according to familiar usage, mean the highest members of the council, but under this charter they are the lowest; the assembly generally means the inferior branch of a state legislature, but in this charter it means both branches of a city council.

burdensome, and expensive conditions imposed by the partisan New York election laws we have cited.[1]

No possibility of Free Nomination or Free Voting is allowed by the charter. It assumes it to be undesirable to have any experienced members of the assembly hold over any city election, or any member in that body who does not represent the last victorious party. As every victorious party, faction, and boss naturally desire to capture all the legislative seats at every city election, this charter is kindly framed to facilitate such results.

3. We have set forth the reasons why it is very undesirable and needless to have two houses in a city council, and have shown that in all the best-governed cities of the world — as well as in a great and increasing majority of American cities — the city council is a single body.[2] The retrogression of the charter to a discarded, double-chambered body is as characteristic as it is unfortunate; yet, if the paramount purpose was to make the mayor supreme, or to govern the city through a boss or any central party power, who can deny that the chances of being able to do so will be much increased by two houses, and compelling them to concur by a five-sixths vote in order to defeat any party purpose against the will of the mayor or the boss?

4. Those who propose to control city governments through parties believe in large combinations. They combine from all parts of the city in managing their party affairs. They act centrally through the boss, the central committees, or the mayor, who, in a party sense, represent and speak for the whole city. This charter facilitates the party use of such combined power for dictating nominations and concentrating exertions upon every separate district in which the non-partisan voters attempt to achieve a success. The greater the city, the more oppressive and irresistible this combined power becomes. The authors of this charter, well knowing all this, refused all provisions for Free Nominations, Free Voting, or any sort of combined action on the part of non-partisan voters.

[1] See pp. 215-217.

[2] See pp. 304-306.

5. The failure of the authors of the charter to provide for the election of any members of the assembly, save its president or speaker, from the city at large, is very remarkable — is indeed almost grotesque. The need for a common charter and government at all for the region about New York harbor rested on the ground, as it was justly declared, that its affairs should be managed in reference to the common interest of the region by men who represented it as a whole, and who would be authorized to speak and act for it in the large spirit of its aggregate interests and duties. The result has been that every member — save one — in each house of assembly is to be elected from a mere local district — stands for a geographical subdivision, and, according to the theory of the charter, owes a first duty to a narrow section. No member can be nominated or elected by the high and pervading convictions that sweep over the whole city, or can declare its common aspirations, needs, or duties. No members can claim the right or dignity of representing the whole municipality or any truly metropolitan policy. Every member can be called to account by his own narrow locality. All this degrades the assembly. It may make the mayor, the boss, and the central party managers appear relatively more dignified and irresistible, but at the expense of the assembly. Their voice will all the more seem that of the great metropolis and its millions of people, while anything the members of the assembly may say will appear only as the selfish, discordant pipings and mutterings of little, local interests.

6. It seems at first almost impossible that there should be any earnest struggles for seats in so undignified and debased an assembly. Yet to sit even in such a body can give an added consequence to a certain class of people. Under the Tammany party system there are advantages of some kind, more or less mysterious, in holding little offices — advantages which citizens of high moral standards, and not very familiar with the possibilities of city-party politics, find it difficult to understand. The facts are indisputable nevertheless; and Tammany men have

been willing to pay large sums of money in aid of securing seats even in such an assembly.[1]

7. We have shown elsewhere[2] how easily a centralized party system, acting through many elections in small districts, gains a power which can largely suppress the independent, non-partisan vote. This lesson is taught — as well as the utter inadequacy of mere small district elections for giving representation to the minority — by the results of the first elections of members of the municipal assembly and of the legislature under the new charter. We may remember that the vote in the whole new city was, for Low 151,000, for Tracy 100,000, and for Tammany 234,000, besides the vote for Mr. George. Considering the vote in *old* New York alone, and disregarding fractions of a thousand, the proportion of votes between the candidates was nearly the same — Van Wyck received 133,000 votes, Tracy 55,000, and Low 77,000; yet of the fifteen members of the new city council, chosen within the limits of the old city at the same time, Tammany elected *every one*. Of the members of the board of Aldermen, chosen at the same time, Tammany elected all but four or five — the latter being supporters of Mr. Low or Republicans. There seems to have been only one *regular* Republican elected to the new city assembly. Of the five presidents of boroughs provided for by this charter Tammany elected *every one*. Of the members of the state legislature, chosen at the same time, Tammany seems to

[1] For example, one candidate for the assembly under the present charter paid $1349.60 as the expenses of his election; another paid $3067.63; and a third paid $7270.30. Of these sums over $7000 seem to have been paid by these three members to the Tammany committee. These facts, so illustrative of the old Tammany system, will help to account for the large sums of money which Tammany was able to disburse near the time of the city elections of November, 1897 — the first under the charter. According to the public journals, Tammany near that time voted at a single session to give away $40,000 in charity within the city (see *New York Times*, Dec. 11, 1897), *the same to be disbursed through its party leaders in the several assembly districts*. This is certainly better than to have used the whole of it either in buying votes or in the bribing of citizens not to vote at all. The transaction is entitled to all the praise that can fairly be accorded to using the money, thus gained from candidates for office, for making the necessitous city poor mindful of the advantages of standing well with Tammany and its assembly district leaders.

[2] See Ch. IX.

have elected ten senators, and the Republicans two from the old city; and of the members of the state assembly, Tammany seems to have elected twenty-seven, and the Republicans and the supporters of Mr. Low together only eight; and only one of these voted for Mr. Low for mayor.

Thus, instead of the charter conferring any form of minority representation — which would have much increased both the Republican and the Independent vote — it substantially suppressed both.

XI

1. It will hardly be denied that among the worst evils connected with American city governments have been these: the power of partisan organizations has become despotic and demoralizing; a lucrative and vicious trade in city-party politics has been established; the spoils system has become intolerable; the just representation of the minority has been defeated; a despotic, debasing, partisan, self-perpetuating boss system has been developed; the government of cities by parties rather than by the people has been the inevitable result. Now, the new charter for New York has not even attempted to remedy any one of these evils, but has extended and intensified all of them.[1]

2. Tammany was never so strongly intrenched by law as now, nor has she ever before had so effective powers for resisting assaults as under this charter. It enables her to

[1] The charter contains some excellent provisions relating to civil service reform, but the courts in the city have held that it has also deprived the state offices of the most essential power for preventing the Tammany government from prostituting the civil service law and administration for its own party purposes — a prostitution which has been systematic and debasing under the new charter. The charter contains some badly framed clauses for a city Bureau of Statistics which might have been made a much more useful agency had not mayoralty domination been favored. There are charter provisions, sound in theory, enabling ex-mayors, etc., to have seats in the city assembly, but we must think that no such officers will ever take a seat in a legislative body so destitute of authority for important or dignified services as that which the charter creates. There are also various other provisions in the charter which are desirable perhaps to prevent abuses sure to arise under a very badly constituted city government like this, but which would, in large part, be both needless and mischievous under a charter based on sound principles or which provides for reasonable Home Rule.

secretly exact her price for all nominations and elections, and she can compel party services at the hands of all officers and city laborers, as she chooses, — the charter making no effective prohibitions. This charter says to Tammany, and her leaders say to her supporters, "All the offices and all the spoils belong to those who furnish the voters and manage the party. There is an abiding tie of self-interest between them."

3. Tammany would be apparently justified by the example of the supporters of Mr. Tracy in using all external party forces to keep itself in power, for the Republican state boss, in the city election of 1897, is believed to have requested the President to take part in the contest; and he seems to have induced several United States Senators to invade the independence of the new city by delivering partisan speeches, seeking to influence its voters in city elections by mere party considerations.

4. This charter, therefore, both by its provisions and by the interpretation put upon them by its authors, will strongly favor partisan city government, which will continually invite state and national party intermeddling. More and more the charter will involve city affairs in state and national politics and stimulate the great parties to supreme exertions for their control as essential to the control of the state of New York.

5. It is obvious, therefore, that we can never take the government of the city of New York out of partisan politics until the leading provisions of this charter shall be repealed, and we shall provide the city with a charter under which the minority and the independent voters, as well as mere party men, shall be fairly represented.[1] As a whole, the defeat resulting to those responsible for this charter was the most discreditable and disastrous known to our municipal history.

[1] This view of the new city government must be incomplete without considering the merits of the officers whom Tammany has elected or appointed for the new city. But we have no space for this. It must suffice to say that very few of them are well-known citizens; that — so far as we can learn — none of them had any recognized part in the great movements of recent years for improving the government of the city of New York; that all of them are supporters of the party system of Tammany — save the few who have secured their places under

XII

Lest the view of the charter here presented may be thought peculiar or unfair, the author wishes to cite the highest authorities on the subject known to him.

1. Dr. Albert Shaw — the eminent writer on municipal affairs often quoted in these pages — has elaborately considered this charter.[1] The writer finds nothing in Dr. Shaw's article from which he dissents save the opinion expressed by him that the majority of the commission really desired minority representation. Dr. Shaw recognizes the dominating authority of the mayor under the charter. He sees the utter incapacity of the municipal assembly for its functions, showing that this body has no adequate powers for making ordinances. He says the mayor's veto power will enable him to defeat any doings of the assembly concerning the budget — or expenditures of the city — and that the action of the municipal assembly in this regard "becomes merely a grand farce."

Dr. Shaw says that under such a charter state intermeddling in city affairs will continue, and that there can be no adequate power for resisting it. While declaring — as we also think — that the charter has various sound provisions as to franchises, docks, ferries, and public assets, he says, of the

the emasculated Civil Service Examinations, or are influential members of the boss faction which forced the charter upon New York City; that they all believe in enforcing party tests for city offices, and in so managing city government as to make it serviceable to state and national parties. The *Atlantic Monthly* says that the supporters of Tammany insisted that the "new municipality would, and ought to be, used for the benefit of its organization," and that the new officers "were chosen from among . . . the men counted upon to do absolutely . . . the will of the powerful politicians who, with no official responsibility, nominated them. . . ." *Atlantic Monthly*, Jan., 1898, p. 107.

The notorious partisan dealings of Tammany with one or more of the judges in connection with the last city elections, which aroused general indignation; the recent resignation of a high judicial officer elected by Tammany while an investigation was being made into the affairs of his office; the recent scandalous and unprecedented controversies between the criminal judges and the prosecuting attorney; the investigation of New York City abuses by a legislative committee now just begun — these are some illustrations of the various official scandals, under Tammany rule, which are ominous of future city government under the new charter. Since this was written a legislative committee has been appointed — to investigate Tammany abuses — which is now in session. See Appendix.

[1] *Atlantic Monthly*, June, 1897, pp. 733-748.

instrument as a whole, that "the country must look elsewhere, if it seeks instruction in the framing of charters." We are aware of no writer — not concerned in the making of this charter — who has taken a more favorable view of its provisions.

2. The Association of the Bar of the City of New York — among whose more than 1500 members are to be found a large majority of the ablest and most respected members of the legal profession there — gave the reported form of the charter a careful consideration before it had been enacted. The association appointed a committee, whose elaborate report upon the subject was, after a full discussion, adopted.[1]

To state the objections to the charter made by this report would be to repeat much that has been said in this chapter. The report says that "the proposed charter . . . is not a charter in any proper sense; . . . it is an imperfect compilation . . .; loose and defective workmanship abound in almost every part . . .; the marks of extreme haste are everywhere visible; by far the larger portion of all local legislation, as to matters of importance, is to be transacted or controlled not by the assembly but by . . . heads of departments who are appointees of the mayor."[2]

The Bar Association expressed its final opinion of the charter in these comprehensive and unequivocal words: "that in the judgment of this association the enactment of the proposed body of law contained in that charter would give rise to mischiefs far outweighing any benefits which may reasonably be expected to flow from it."

[1] This committee — whose report was printed — was one of distinguished ability, character, and experience. Adherents of both parties were among its members; its chairman had been nominated for a justice of the United States Supreme Court; another of its members, the leader of the New York City Bar, was president of the National Municipal League; two others of its members had been upon state commissions for improving the government of New York City. It was a committee eminently competent for making a good charter for the new city.

[2] The report says it would seem that the commission, at an early period of their work, became convinced that it would be impossible to adequately execute its task without a large extension of time, and says it is "deplorable that the commission did not insist on having such extension."

XIII

1. Nothing could arrest the partisan and suicidal purpose of the boss faction to impose such a charter upon the Greater New York. It was without effect that Mr. Low and Mayor Strong formally objected, in writing, to several of its bad provisions, and that the latter vetoed the whole instrument.

The proceedings of the state legislature in connection with its enactment — quite in the spirit of its origin and aims — were not creditable to New York. It would seem that not more than four or five hours of its sessions were given to debates concerning the provisions of the charter. Not a twentieth part of these provisions appear to have been read before either house of the legislature. Several of its members, after declaring the charter to be indefensible, — and sure to be disastrous to the Republican party, — nevertheless declared an intention to vote for it, because, as they said, the party majority demanded it — and, we may add, because they feared their favorite local bills would be defeated at the hands of the adherents of the boss faction if those members should refuse obedience to its commands that they support the charter. There was a lamentable scene of partisan despotism and servility in the legislature.

2. Thus a despotic party faction, by indefensible means, needlessly and disastrously imposed upon the new city at its birth, and against the best intelligence and virtue of its people, an intolerable, antiquated, partisan municipal system — sure to cause discontentment and conflict until it shall be overthrown. It has made it certain that the question of a fit government for the city of New York must be one of the paramount issues in New York state politics until the new city shall secure a government based on sound principles and framed in the light of the best municipal experience of the world.

XIV

A single point of importance remains, — one which concerns the essential conditions of municipal reform. We mean

the proper relation of state parties, not merely to city and village governments, but to the governments of towns and counties as well. The subject requires a whole chapter, but we can consider only two points, — first, the effects of a constant interference with such bodies, in a limited way, by the central party and the boss, which has been increasing for years; and, second, the despotic invasion and capture of one or more such bodies with a purpose of making them an active agency for party aggrandizement. The imposition of the Greater New York charter was an unprecedented case of the latter kind.

1. We have seen that when this charter came before the legislature, members who disapproved it feared to express their opposition lest the party majority should wreak their revenge upon them by defeating their own local bills. Here we have illustrations of the effects of a party majority despotism in state party action of the first, or limited kind, yet sufficient to greatly obstruct the chances of just legislation, — or reasonable Home Rule, — not only in cities and villages, but in towns and counties. This kind of limited despotism has been established — mainly through the action of the state party boss — by a constant interference with the just liberty of local nominations and elections. He and the party managers dictate, if they do not bribe, the local nominations and elections. The boss can get money for his party, and his supporters, — at least, — by aiding or opposing local candidates. Central party influence is used to make legislators subservient, and to control local administration. National party tests, which are immaterial for local officers, are enforced by the coercion of the state party boss and managers. This system makes the state boss possible, and true Home Rule impossible.

XV

Candid readers can hardly reflect upon the facts considered, relative to municipal or other local affairs, without feeling that political parties have usurped a centralized and despotic control which has seriously impaired that just, local

independence essential to good government, — and which our state constitutions contemplate. In doing this, the central party authorities have made their favor and support of their platforms — if not the favor of the state boss — conditions of holding local offices. The New York Constitutional Convention of 1894 condemned such practices in those provisions which make superiority shown by competitive examinations — irrespective of party opinions or the favor of the boss — essential to entering or gaining promotion in the civil service of the state.[1] The purpose of the constitution would hardly have been more definite had it declared that, whereas party opinions and favor are unimportant for filling the great body of offices to which the examinations extend, therefore appointments and promotions therein shall be made for personal merit and fitness to be fairly tested regardless of party affiliations.

This was a noble improvement. But the same constitution unfortunately contains another *original* provision of a very different character, which looks as if extorted by the party machine as a compensation for its loss by reason of the section first quoted. This additional and dangerous provision[2] declares that the laws may provide for boards of "officers charged with the duty of registering votes, . . . distributing ballots . . . and receiving, recording, or counting votes at elections, which . . . shall secure equal representation of the two political parties which have cast the highest and next highest number of votes . . .;" and that the members of these boards and officers "shall be appointed or elected in such manner, *upon the nomination* of such representatives *of said parties* respectively, as the legislature may direct."

These provisions are open to very grave objections: (1) they are utterly repugnant to the other provisions just cited, the former declaring that the "whole civil service of the state" shall be open to all the people alike, on the basis of "merit and fitness" to be tested by free competition; but the last provisions declare that a particular class of offices

[1] See N. Y. Const., Art. V., Sec. 9, quoted *ante*, p. 176.
[2] Const., Art. 2, Sec. 6.

shall be the monopoly of the two largest parties; (2) these monopolists are to be nominated by the representatives of such parties, and no test of merit or fitness, or even of publicity, is required; (3) while one class of these provisions practically declares that party power and privilege are excessive and dangerous, and therefore restrains them, the other greatly increases these very evils; (4) the provisions last cited despotically established a party test for officers; they unjustly declare all the people incompetent to hold them unless they are adherents of one of the two largest parties; they make the nominees of these parties the exclusive judges in their own cases; (5) the independents and the members of small parties, who are thus disabled, are the very citizens who most need protection through representatives on the election boards in cities, we having shown that mere party-selected election officers are ready to conspire with each other for party domination.[1] (6) This new system of monopoly and exclusion will more and more tend to bring all city and other local elections under the control of adroit and unscrupulous partisan officials, whereas the public interests require us to strive to secure just-minded and non-partisan election officers — instead of pairs of untrustworthy party manipulators — each member of whom can be justified only on the ground that the other cannot be trusted. The theory of this latest constitutional provision would justify the appointment of judges in pairs upon party nomination, on the ground that no single judge can be trusted.

XVI

1. We have said[2] that a state party and its boss may go beyond this limited kind of local intermeddling. They may strive to make a great city — captured through the imposition of a partisan charter by state party action — the means of their own aggrandizement and continuing supremacy in the state. Such, we repeat, were the purpose and significance of the effort to impose a partisan charter upon the Greater New

[1] See pp. 126, 127, 211.

[2] p. 493.

York, — the first important scheme of the kind in our municipal history. A party can do this only at the peril of dividing its own ranks and of giving its party opponents a chance for a great victory — and this was what was done in the case before us. The result of this victory enables us to draw another lesson concerning city-party government from the action of Tammany. We have before called attention to its intimidating methods, through sending great, semi-military bodies of its followers to attend political conventions. We have shown how natural it was that autocratic mayors and party government in great cities should strongly tend to make these methods more effective and dangerous. We have also asked attention to the probability that the city-party system would soon, owing to the rapid growth of cities, make the mayor of New York a party rival of the governor of New York.[1] What was before but anticipation has now become reality. As the time approached for holding the New York Democratic State Convention for nominating a governor at Syracuse,[2] it became manifest that Tammany proposed to use its new power for securing the nomination, for governor of New York, of Mr. Van Wyck, its mayor of the Greater New York City. But the Democrats residing outside the city had begun to comprehend the new municipal power which was threatening their subjugation. They seem to have largely united upon Ex-Governor Hill as an anti-Tammany candidate — and none too soon. Tammany resorted to its old, intimidating, semi-military tactics on a larger scale than ever before. According to the journals,[3] it gathered, in addition to its regular delegates, and sent from New York City to Syracuse, nearly fifteen hundred of its peculiar representatives, — "braves" with "high hats and canes," as the journals say, — in four separate trains — "forty-two cars, exclusive of baggage vans." According to the best information obtainable, nearly a thousand of the members of this expedition were officers in the municipal service of the city of New York — men who, under the ordinances of Boston[4] or the

[1] See some interesting facts on these points, pp. 140–142.
[2] In September, 1898. [3] *New York Times*, September 28, 1898. [4] See p. 173.

usages of any well-governed city of the world, would have been dishonored, if not removed, for such breaches of official propriety and duty. With these trains and controlling them, according to the journals, were many city commissioners and other high city officers, and also the party leaders and managers under the Tammany system. Besides, according to the journals, there was a Kings County delegation, headed by the president of the Board of Police of the Greater New York, "consisting of sixty-five delegates and two hundred or more shouters."

All this is certainly a unique and significant illustration of the relations between the police and the people — and of the kind of government which has been established under the new charter of New York. How can we hope for non-partisan city administration so long as high city officers and their official dependents leave their places of duty to go upon trains filled with partisan electioneerers apparently sent to control political conventions?

2. Tammany barely failed to force the nomination of its mayor for governor; but at its suggestion the mayor's brother was nominated as a compromise candidate, and was accepted by his party. A majority of a very few thousand for a reform candidate for governor of New York defeated that brother's election and prevented Tammany capturing the state by reason of having captured the city.

3. This unique and monstrous Tammany expedition, and especially all these city officials who should never have left New York City for such a purpose, returned to New York, probably with more confidence than ever before in the Tammany theory of city government. They doubtless explained to the officials left behind the peculiar advantage of this Tammany military and financial system, and the duty of all Tammany officials to support it liberally and vigorously, — especially if they desire to continue in office.

If so much can be done in eight months toward capturing a state through the control of a great city under a partisan charter, — and especially if effective restrictions upon city-

party government shall not be speedily made by such methods as we have suggested, or those which are better, — it cannot, apparently, be long of much importance what the people of rural New York may desire in regard to their government, for it will be controlled by one or more of her great cities. And the city domination, now imminent in the state of New York, cannot be very remote in several other states.

Thus the experience of New York has enabled us to see that the question of party rule in cities not only vitally concerns their good government and the liberty and safety of their best citizens, but, hardly less, the power, the political independence, and the morality of the whole rural population of states.

APPENDIX. — THE NEGLECTED NEED OF MINORITY REPRESENTATION, AND THE THREATENED DANGER OF STATE POLICE DESPOTISM, IN NEW YORK

1. Breach of Republican party managers with Tammany. Its city administration being investigated by the legislature. Yet, independent voters denied all opportunity of Free Voting, and party tests are enforced against them. Minority representation strangely neglected.

2. Republican party scheme for a state police in Democratic cities. Its sudden presentation at end of a session. Its despotic and revolutionary character. Its incompatibility with our Republican institutions. It would defeat true Home Rule and essential municipal activity. It would prevent effectual inspection of police administration.

3. The need of a police state-school — analogous to those at West Point and Annapolis — for the education and discipline of those seeking to be officers over policemen.

I. Since the foregoing chapters went to the printer, proceedings and omissions on the part of the ruling party of the state of New York have occurred which require some notice here. Experience under the charter, when the last chapter was written, had been too brief to justify more than ominous anticipations.[1] But facts of evil significance as to Tammany administration have of late more and more come before the public. On the other hand, the moral tone of the administration of Governor Roosevelt has facilitated a spirit of patriotic scrutiny which has led to some alarming disclosures. In the meantime, the despotic power of Tammany has emboldened her officials for acts of rash indiscretion.

It has now apparently become impossible for the partisan leaders and boss of the republicans to maintain their old friendly relations with Tammany. As a consequence, the more independent and non-partisan elements in the republican ranks were able to compel the passage (April, 1899) of a new and admirable Civil Service Reform law,— such a law as the boss and partisans of both parties have long opposed,— and also to repeal the vicious old law, which Tammany has been easily able to defy and pervert to its own advantage. This old law was in the spirit of the Greater New York charter, and the two had a common origin and purpose.

[1] See pp. 489, 490, and notes.

A breach between the managers of the two parties was, therefore, unavoidable. The managers of the republican party, not daring to justify the evil doings of Tammany, found themselves compelled to investigate them.[1] The republican leaders, who, eighteen months before, had forced a partisan, despotic charter upon the Greater New York, — expecting to capture it at the first election, — were now ready to join hands with the independents in resorting to an investigation for arresting the very evils, under it, which the independents had told them from the beginning were inevitable.

II. Though some of these leaders at the outset supported the investigation with fear and reluctance, its first disclosures established its wisdom, supplying direct and conclusive evidence of some of the worst evils of the Tammany system which we have set forth. We cannot take the space needed for even briefly summarizing this evidence. It must suffice to say that it requires no retractions, but makes us desire to emphasize the conclusions we had reached. The state assembly, in view of the evidence taken, has greatly broadened the original sphere of its committee's inquiries, and has extended its term until the legislative session of next year. We cannot doubt that salutary results may be expected from the action of this committee — results to which the new Civil Service Reform law, which much restricts Tammany's vicious discretion, will largely contribute.

III. Taking only this law and investigation into the account, we should feel quite sure that the republican party managers had decided to no longer imitate Tammany methods in dealing with cities; — even that it had decided that the interests of the people, rather than those of the party, should be treated as paramount. But we are sorry to have to say other facts convey a different suggestion. We have seen that minority representation was needlessly disallowed by the Greater New York charter,[2] apparently because the members of the faction which imposed that charter were hostile to such representation.

They preferred that Tammany, rather than the supporters of Mr. Low, should triumph. Expecting to themselves rule the new city, they desired no independents or non-partisans either in the city council or in the state legislature. Facts thus far seem to show that they find it easier to accept a true Civil Service Reform law, than to accept a law which will give a real repre-

[1] See p. 490. [2] See pp. 476, 477.

sentation to the 151,000 voters of New York City who supported Mr. Low for mayor.[1]

It seems too plain for argument that to no source of strength in city elections could the worthy leaders of a party turn so naturally or hopefully as to this class of voters, who are supporters of the principles of their party in state and national politics. Yet the voting of all of them is obstructed, if they are not practically disfranchised, by restrictions imposed upon them by partisan laws designed to give party managers the control of elections and the monopoly of offices in cities.[2]

Unless there are in the dominant party of the state of New York powerful leaders who still favor the partisan monopoly to which the Tammany system tends, why has nearly a year and a half passed since Tammanys triumphed, without an effort made in the state legislature to establish any form of minority representation? We have seen that the republican party of New York has been long committed to the principle of such representation, and that it might be established by a law, which the legislature is now competent to enact.[3] Are the vast body of republican voters in the Greater New York, and the many independent democrats that have voted with them,— all of whom demand such representation, — to understand that the republican leaders prefer a few compliant partisans in the city council and in the legislature, whom they secure under the party system, rather than have such a full representation of the people as true minority representation would give? Are the independent non-partisan voters to be permanently excluded from all participation in the counting of the votes, by laws enacted by parties to secure their own monopoly and the aggrandizement of their managers?[4] Can a governor who has nobly championed a Civil Service Reform policy which aims to ensure to young men and women of superior merit — irrespective of party affiliations, favor, or opinions — all the places in the official service of

[1] There is good reason for believing not only that the evil influences of the new charter, but general causes have materially increased the numbers of the independent and non-partisan voters of New York and other cities during the past year. There seems to be an increasing opposition to party monopoly and despotism, especially in cities. The last elections in Chicago, Minneapolis, Detroit, Toledo, Cleveland, and San Francisco indicate this. *Review of Reviews*, May, 1899, pp. 516–521, 570.

[2] For facts on the subject, see pp. 214–217, 294, 295, 487.

[3] See pp. 237, and 477, note.

[4] For facts on the subject, see pp. 494, 495.

the city and the state, long fail to condemn an election system which, in the interest of partisan monopoly, not only largely excludes their fathers and brothers from nearly all legislative offices in cities, but actually brands them as unworthy to aid in receiving or counting votes anywhere — unless they belong to one of the two greatest parties? Would a mere party test for office be any more indefensible, if applied to clerks who are to count the money in the city treasury, than it is when applied to the clerks who are to count the votes in the city ballot boxes?[1] It seems to be more and more the case, in the state of New York, that Home Rule in cities is, by the politicians, held to be, — and strongly tends, under city-party rule, to become, — *not Home Rule by the city people, but Home Rule by the majority of the largest party.*

IV. A STATE POLICE. The other subject which should have some notice here is that of the exercise of police power — the control of the police administration — as to which a new and seductive policy has been suddenly announced by the managers of the dominant party in the New York legislature. This policy appears in a bill introduced in the New York Senate near the end of its session, April 13, 1899. The bill was defeated; but it is understood that a persistent effort is to be made to establish the theory which it embodies, to which the leaders of the republican party seem to have committed themselves. We have space for only a very brief outline of its leading provisions, and a very inadequate consideration of the principles and theories which it enunciates.

The matter of city government is unfortunately much complicated and embarrassed in the state of New York[2] by having her cities divided into three classes, of which the first and second together include the six largest cities, to which alone this bill at first extends. But the other cities, according to its provisions, are to come under it, and the new state police system it establishes, as soon as their population shall reach the required number

[1] See pp. 494 and 495, as to this test. The New York Law of 1895, Ch. 1035, shows the manner in which the two great parties, through the action of their managers, secure the monopoly of poll clerks, ballot clerks, and inspectors, — whom they are to nominate in all the election districts of cities. May we not hope the time will soon come when we shall directly seek and secure fair-minded, reliable men for such places, as we do for all other positions of high trust, rather than mere pairs of crafty and unscrupulous partisans ready to cheat whenever they can? Why should not ex-policemen be required to serve as election officers? They are not likely to be mere partisans.

[2] See p. 413, note.

for being in such classes. The purpose, therefore, is to substitute a new state police system — provided for in the bill — in place of the former city police system, which has prevailed in the state of New York, and we believe, with moderate modification, in all the states of the Union, from the time that policemen first existed in the United States. The important question, therefore, is whether a *new police system* should be established.

1. The new state police system, which the bill, if made a law, would create, provides for an original state police department, extending at the outset to the six cities. This department is to have all the *police powers, authority, functions, and duties* which now belong to or pertain by law to the six cities; and not only these powers, but, generally, the new state department is also to have *the property and income* of these city police departments, which are to be suppressed by their absorption or consolidation into the new state department. This new state department is to have its central office at Albany, the capital of the state. The local city police organizations and activities are to be discontinued. 2. The head of this state police department is to be a single "commissioner of state police," upon whom all state police power is to be concentrated. He is to be appointed by the governor and confirmed by the Senate for the term of six years. It is not provided that this commissioner shall have any advisers or assistants, his authority being possessed by him as absolutely as any acknowledged despot could possess his powers. But he is required "to appoint, and *at pleasure* remove, a deputy commissioner of state police and a secretary of state police." These three officers — one supreme and his two subordinates — are to have all the police powers of the six cities, with others given by the bill. The commissioner has also the vast power of appointing and removing a police treasurer in each city, who is to be the *purchasing agent* of the police department. There are no conditions that such appointments by the governor or the state commissioner shall be made in reference to any experience, capacity, or other standard of qualifications; on the contrary, this appointing power of the latter is declared to be exercisable "at pleasure," and therefore may be exercised according to the theory — as it is conferred in the language — of the party spoils system. The governor's appointing and removing power is not less absolute.

3. It is not by inference merely, but by the express provi-

sions of the bill, or new state police system, that the vast police powers of cities to be thus transferred are to go to him as a *single state officer*, to be possessed so absolutely by him that he may at pleasure transfer any part of his power, authority, functions, and duties to the "police chiefs" of the cities, who are to be appointed by him. These chiefs are to detail policemen to the election polls of the cities, obviously *a great political power.* All paramount police authority, therefore, is centred absolutely in one state police commissioner, save as he may temporarily delegate fragments of it to his appointees, the police chiefs of cities. It is further declared the state commissioner "may *make, adopt, and enforce such rules, orders, and regulations, and do such other acts* as may be reasonably necessary (of course in his view) for the exercise of his powers." He is, therefore, to be equally a despot in the legislative and in the executive spheres over the whole domain of our police affairs. Both the commissioner and the city chiefs have the *vast political power* of appointing an unlimited number of special state policemen, practically at their discretion.[1]

The state police commissioner, with slight exceptions, is also the ultimate executive authority to whom appeals must be made as to every question of police administration, duty, or discretion which can arise in the cities, and *his decision is to be final.*

4. The proposed law would obviously suppress all legislative action in cities, and also all local officials, so far as they have any function or duty of inquiry or discussion concerning police matters. Local, city authority, therefore, for making ordinances, so far as police affairs are concerned, would be suppressed. Not only would all Home Rule officers be practically extinguished, but the very sphere for Home Rule action in the police domain would itself be abolished. The state power, exercised by a single, absolute state police commissioner, would consequently be omnipresent and supreme in every city, in every detail of city affairs, and as to the duties of every police officer who may patrol its streets, so far as police action is concerned; and this police authority is the most important, potential, multifarious, and pervading of all authority known in municipal life.

[1] We have no space — nor is there any need — to consider the provisions of the bill as to the rights and duties of ordinary policemen. They are, in substance, the provisions of existing laws, so compiled as to be almost certain to lead to much needless uncertainty, confusion, and litigation.

5. We cannot go further into the details of the official machinery of the new scheme, most of which is highly centralized and despotic. Such a bill, if made a law, would not only declare the people of a city should have no part in the police administration they must accept, but that no local executive officer or legislative council should possess either authority, duty, or liberty as to making or enforcing the ordinances under which they must live, regulating the streets which they must travel, or compelling obedience to the moral standards to which they may conform. Such a law would reverse the whole police — and a large part of the municipal — policy which has prevailed in every state of the Union and in all the most enlightened cities of the world. Tested by American constitutions and precedents, it is the most un-American and anti-republican scheme ever proposed. It proclaims city residents to be unworthy of having the least direct police authority as to matters at their own doors. It condemns the elementary principles of the American government. In spirit, it declares the theory of local Home Rule — whether in cities, villages, counties, or towns — to be a mistake, and that the great effort should be to make state rule supreme and exclusive, by absorbing all local jurisdictions; and why should not the nation make similar claims against the states by giving us a national police commissioner and making us a republican Russia? Such a law would establish a police system more centralized and despotic than that existing in any leading nation of modern times except Russia, and perhaps Germany. It would preclude the possibility of that excellent police system of England, — the best which has ever existed for a free state, — and from which nearly all that is most valuable in our police system has been borrowed.

More than this, it would so weaken the forces of local government, and so much augment the central powers of the state, as to seriously impair the counterpoise between them, upon which the constitutional and legal systems of American states repose.

We have no space for adequately illustrating the extent to which this state police scheme would diminish the sphere of legitimate city activity and protection and enlarge those of the state. Every power given to the state police by this bill, as to mere city affairs, is a part of the measure of this diminution — a declaration of the incompetency of city residents to deal with their own affairs. We can mention here only two examples, startling in themselves:

(1) absolute state control in the future of the purchase, location, and ownership of all police station-houses, and other erections and equipments, for which the city must pay, without any chance for a hearing as to their cost or location; (2) the fixing of all *police salaries* and other police expenditures, for which the city must provide the money, also without a hearing as to their amount. But in the note we give a few examples of the subjects as to which, according to this bill, the state police control would *deny the city any authority, grasping the whole of it arbitrarily, and exercising it exclusively by its own officers,* thus accomplishing a great revolution,[1] and making fearless, non-partisan, or effective debates in cities over city affairs impossible. This scheme, in principle, declares that we need no municipal government; that city councils and all local control are useless; that only

[1] The bill declares, "It is hereby made the duty of the *state* police in the cities . . . to regulate the movement of teams and vehicles in streets, bridges, squares, parks, and public places, and remove all nuisances in the public streets, . . . inspect all places of public amusement, all places of business, all places having excise or other licenses to carry on any business; all houses of ill-fame or prostitution, . . . all lottery offices, . . . all gambling houses, cock-pits, rat-pits, and public common dance-houses, . . . enforce and prevent the violation of all laws and ordinances in force in such cities, . . . possess powers of general police supervision and inspection over all licensed or unlicensed pawnbrokers, venders, junk-shop keepers, junk-boatmen, cartmen, dealers in second-hand merchandise . . . and auctioneers, . . . premises, . . . dealers in second-hand merchandise. It shall be the duty of the (state) city chiefs, each in his city, to provide and cause to be enforced . . . rules and regulations for excursion steamers, yachts, and all crafts taking part in regattas or races, . . .

"Each city chief shall in his respective city from time to time, with the consent of the (state) commissioner, establish, provide, and furnish stations and station houses, or sub-stations and sub-station houses, . . . Each city chief is hereby authorized and empowered to furnish horses and wagons, to be known as precinct wagons . . . The board of estimate and apportionment . . . are *directed* to appropriate a sufficient sum of money in each and every year . . . for the purpose of furnishing such horses, wagons, and apparatus connected therewith, and . . .

"the number and boundaries of precincts in any city shall be fixed by the (state) city chief in said city. The commissioner shall have power to erect, operate, supply, and maintain . . . lines of telegraph and telephone . . .

"The state police may . . . procure and use and employ such rowboats, steamboats, and boats propelled by other power as shall be deemed necessary and proper. It shall be a *misdemeanor* for any person *not being a regular member* of the *state* police established in any city of this state . . . to serve any criminal process within the cities affected by the provisions of this act. The *commissioner of state* police shall have power to *apportion any general expense incurred for the general conduct*, maintenance, or equipment of the state police . . . salaries and expenses of any officers, members, or employees . . . It is the intent of this act to give to the *commissioner of state police cognizance and control* of the state police throughout the cities affected by this act."

central, irresistible, omnipresent, executive state force is necessary, before which city people must bow, stagnate, and be servile and silent. It is a striking fact that the whole course of our study has shown that the tendency and progress in good city government, even under a police system so despotic as that in Berlin, have been made through increasing Home Rule and bringing unofficial citizens more and more into participation in the management of their local administration, but this despotic bill and scheme of a state police, in a republic, would reverse this tendency, and substitute those methods of centralization and state autocracy which all enlightened monarchies are abandoning as dangerous and indefensible.

6. If the state may thus appropriate and exercise all local police powers, why may it not do the same thing with all local sanitary powers, with all local authority over schools, taxation, transportation, and other matters, until real Home Rule, and consequently effective local activities, which are the peculiarity and strength of republican governments, shall substantially cease to exist, and state domination shall become alike universal and absolute?

It is obvious that without a right and duty on the part of city officers to take an active and responsible part in governmental affairs at their own doors, of which police matters are among the largest and most essential, the vitality and utility of local government cannot be preserved, nor can a debasing subserviency to central despotism be avoided. Central party tyranny has, as we have shown,[1] already become despotic and debasing, especially in cities; and this police scheme is a desperate demand for a sort of tyrant in the police sphere — a demand which naturally arises when the legitimate forces of government have been perverted, and party despotism has become unendurable. Such a tyrant would make true city councils — that is, representative government in cities — impossible.

7. But we have seen — modern municipal experience shows — that one of our greatest municipal needs is city councils, representing not parties, but the people, competent to frame municipal ordinances, and especially police ordinances — bodies that shall be fearless and potential enough to keep the whole police department upon its good behavior and to be great forces in leading the benevolence and civilization of the age. With

[1] See pp. 493–495.

such councils, mere state police domination would be impossible — almost unthinkable.

We have also shown how, through a uniform police code, the payment of a part of police expenses by the state, and inspections by state officers, the state may easily secure proper subordination and discipline on the part of the local police without resorting to revolutionary measures.[1] Nothing of this kind is proposed by this bill. The state, under it, proposes to take all the police property of the cities, to suppress all police activity by their people, and to fix the measure of their police expenditures, without paying any portion of police expenses.

8. It seems to be an unanswerable objection to this scheme of state police despotism that it provides — and in fact permits — no adequate method of police inspection by the state, such as we have, in the second chapter, shown to be useful and essential. A state bureau or officer which does not actually carry on the local police administration is independent to deal with it. He is naturally inclined to inspect and report upon it severely. He will fearlessly compare the results in cost and method in each city with those in the others, with excellent results, as we have shown, especially from the English practice. City councils and other city officers — if made competent as we have proposed — will also contribute their useful criticisms.

But the moment — local councils and local police activity being suppressed — a single state officer shall be made supreme and universal in his control of local police affairs, there will be no competent authority to expose his wrongdoing or make any form of fearless or effective inspection. This state police despot will not expose his own maladministration; nor will he show his own incapacity by comparing results in one city with those in another of his police realm. He will always declare it well governed. He will not dare act in opposition to the wishes of the party-elected governor. The governor, his only superior officer, will not order inspections, unless, indeed, he is seeking for grounds for a removal, most likely for party reasons. Do we desire that the legislature should be made an inspecting body for cities, and as such have additional reasons for interfering with reasonable Home Rule in every city?

9. We must not wholly ignore the party interests and possibilities which such a state police scheme involves, nor the very

[1] See Chs. II. and XVI.

unsatisfactory manner and time of bringing it before the public. The majority of voters in the six cities to be at first subjected to the new law belong to a party with which the authors of the state police scheme expect an anxious gubernatorial contest a few months hence. Who can doubt that the vast political influence this scheme would put in the hands of the party in power would greatly increase its chances in this election, — unless, indeed, a disastrous revolution within its own ranks should occur, similar to that which happened when the apparent promoters of this scheme attempted to ensure their domination by imposing a partisan charter upon the Greater New York?

The last scheme, like the first, seems to have been secretly matured in the councils of the leaders, and to have been brought forward, as a party measure, just at the end of a session, thus precluding — whether by design or not — that fair and intelligent consideration which so great a revolution in our police system requires. It is, therefore, a just cause for congratulation that, contrary to the facts when that charter was pending, there were a few men in the Senate who had the statesmanship and moral courage to resist the party demand for servile obedience.

10. The duties of statesmanship — we might, perhaps, say of ordinary justice and discretion — in dealing with so grave a subject are very plain. Even if no more than superficial methods were intended, the people of the cities directly affected should have been first consulted, and a bill and report should have been brought in at the beginning of a session. The bill should not be a conglomeration — like that before us — of all the laws applicable to any of the six cities, but should be in the nature of a systematic state police code, which should supersede the whole of these laws, and tend to order and definite authority, rather than to the confusion, distressing doubts, and needless litigations which this crude and hasty bill suggests. An adequate bill would, of course, be drawn in the direct and paramount interest of the people both of the cities and the state, without any reference to mere party advantage. If the public interests in regard to the subject were adequately conceived, the governor would be authorized to appoint a commission, having a police expert and a statesman upon it, to first examine and report upon the best police systems of Europe, — those of England, France, and Germany, whose long and varied police experience can give us much information which we greatly need. A police bill

drafted and enacted in the light of such information — like that which Sir Robert Peel championed — might be an honor to all concerned in its production.

11. If, from such objections to this police scheme, we turn to the reasons given for it, these most deserve notice: (1) It is said it will tend to simple methods and vigor of administration. A despotism always does this, and the local government essential for a free people can hardly be as simple as a centralized tyranny. (2) It is said it will relieve us of bi-partisan commissions. We have dealt with the objections to such commissions elsewhere, and have concluded that, bad as they are, they are preferable to police domination by a single party, which this new scheme will facilitate. (3) We are told it will give us a single head of the police, which is claimed to be a great advantage in the way of simplicity and vigor. This is the old argument of despotism. It is the justification of the Russian police system and of the worst parts of that of Germany. We have shown how much confusion of thought and how many fallacies there are, connected with a certain measure of truth, in the seductive and superficial theory of a single head of the police. It has been made plain that a single head, such as the new scheme provides for New York City, could not properly dispose of police trials alone, even if he did deal with anything else.[1]

(4) But the chief reason given for the new scheme is a claim that it will take police administration out of party politics — a most desirable result, certainly. We must think this claim to be utterly unwarranted, and that the new scheme would make the police power a more potent party force than it ever has been — in both state and city politics.[2] The politicians in both parties — like the independents — regard the bill as a party measure for party advantage. Are they all mistaken?

We have seen that the state commissioner, who has all controlling power, is to be appointed and removed by the governor — the political head of a party — "at pleasure," subject to confirmation by the Senate, and that the commissioner appoints and removes city chiefs of police practically in his discretion, — absolutely "at his pleasure," during the first year of his term. It is

[1] See pp. 431–434.

[2] The bill referred to contains some commendable provisions — most of which of any value are taken from existing laws — against policemen interfering in party politics.

only down in the common ranks of mere policemen, who must absolutely obey, where non-partisan provisions are to prevail. Those high police officers who wield paramount power may be mere political representatives of the state executive and the Senate, — doing as they please, as to their appointments and removals. Here, apparently, we see the reasons why no non-partisan or adequate qualifications are required on the part of nominees of the governor or of the state commissioner. If it can be said with truth that the present governor is not likely to freely nominate an active, partisan republican for state commissioner, it may be answered that the present Senate would confirm no other. Does any one doubt the party purpose of the republican senatorial leaders in urging this bill? Does any one believe they do not expect great gain from state control of the police? Does any one think they would support a law which declared that the state commissioner should be a graduate of West Point, or a non-partisan of long police experience? Besides, the next governor may be an extreme politician. Would he and his party hesitate to retaliate for this partisan attempt to control the police in democratic cities? Can any well-informed man fail to see that state police scheme has already made the police question more than ever before a party issue? In every city to which it extends, this question has already become an absorbing political issue. Can one doubt that party contest for the election of members of the next state Senate will be more bitter, partisan, and intense by reason of the control of the state police having been made a party question? If the control of election machinery has, in one particular, been taken away from the police, it has been handed over to officers whom the two great parties nominate and practically appoint, thus making elections in some respects more partisan than ever before.[1]

V. We think the reader must have been impressed with the need of there being more men than we now have who are well instructed for the discharge of the higher police functions, — for the duties of commissioners, police chiefs, inspectors, and captains. The number of policemen must rapidly increase in our cities and villages. The duties of police officers not only in their legal aspects, but in their administrative complications, are fast becoming more difficult. It is essential not only that there should be more complete theoretical instruction, but more prac-

[1] See pp. 494, 495.

tical experience for such positions. Above all, it is necessary that we should reënforce every means through which the needed competency can be attained, while at the same time increasing the facilities for gaining the chief offices in the police force without coming under debasing obligations to parties, their managers, or the boss. We must also strengthen the feeling that to be a true policeman requires independence of all mere party passion.

It is being more and more clearly seen that in various ways the qualifications, duties, and proprieties of police life are analogous to those of military and naval life. More and more the people are recognizing the facts that the thorough instruction of our officers of the army and navy are of inestimable public advantage, not merely in providing more competent officers, but in raising these two branches of the public service above the low standards and interests of partisan politics. That these results have been mainly due to the discipline, technical instruction, and character-forming influences of the technical schools at West Point and Annapolis, is the common conviction of all competent judges. What would our army and navy now be but for those schools?

Why should we not have similar schools for training young men for holding police offices? Why should not the state of New York take the lead by establishing such a school, to which other states would, perhaps, send students? Its graduation standard should be high enough for admission to the position of officer over policemen, but there should be, of course, an opportunity — as there is in the army — for official elevation from the police ranks. We believe such a school would soon develop a patriotic, honorable, and non-partisan spirit, which would do much to elevate police administration, and prevent a monopoly of office in it by mere politicians. The school could also be made to largely supply such instruction and discipline as would better qualify young men for officers in the military service of the state and in its penal and other institutions.[1]

[1] There is an increasing appreciation of the need and utility of such instruction and discipline. Several of the public institutions of the state of New York now support schools for training those who are to take part in their administration. Mr. Bonner, the worthy ex-Chief of the New York City Fire Department, is now exerting himself in behalf of the establishment of a school he hopes to have, aided by the city, for the better instruction of those who are intending to become firemen.

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